HEARING ON THE FAIR LABOR STANDARDS ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON LABOR STANDARDS

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, ON SEPTEMBER 24, 1985

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HEARING ON THE FAIR LABOR STANDARDS ACT

TUESDAY, SEPTEMBER 24, 1985

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LABOR STANDARDS,
COMMITTEE ON EDUCATION AND LABOR,
Washington, DC.

The subcommittee met, pursuant to call, at 1 p.m., in room 2261, Rayburn House Office Building, Hon. Austin J. Murphy (chairman of the subcommittee) presiding.

Members present: Representatives Murphy, Hawkins, Jeffords, Petri, and Bartlett.

Staff present: Richard Fiesta, subcommittee counsel; Thomas Lamb, staff director, Subcommittee on Labor Standards; James Riley, legislative assistant, Subcommittee on Labor Standards; and Mark Powden, minority labor staff director.

Mr. MURPHY. The Subcommittee on Labor Standards will convene.

I have a prepared statement, which I will forego because it is six pages long, and submit it for the record.

[The prepared statement of Hon. Austin J. Murphy follows:]

PREPARED STATEMENT OF HON. AUSTIN J. MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA AND CHAIRMAN, SUBCOMMITTEE ON LABOR STANDARDS

I have convened today's hearing of the Labor Standards Subcommittee to begin our formal examination of the impact of the Supreme Court's decision in the case of *Garcia* v. *San Antonio Metropolitan Transit Authority*. Since the Court issued its opinion in February of this year there has been a great deal of confusion as to exactly what effect the so called *Garcia* ruling will have on local governments and their employees.

I believe it is important for all of us to remember that the issue of Fair Labor Standards and local governments is not new nor is it an accident or the result of unwarranted intrusion by the courts into the legislative process. I believe the decision is constitutionally correct. The Congress twice passed legislation extending the basic protection of the Fair Labor Standards Act [FLSA] to some and then all local government employees. Considerable debate and testimony accompanied these legislative changes. Many of the groups who will be testifying today participated in the earlier hearings, the main focus of which was the practical budget impact of FLSA coverage on local government rather than constitutional questions. The prevailing opinion in 1974 was that with certain accommodations, for example section 7(k) of the Act, the impact of the FLSA on the public sector would be managable.

The Subcommittee is taking the same practical approach in the wake of the *Garcia* ruling which restored the Congress' authority to regulate wages, hours and working conditions for all American workers.

It is unfortunate that several important months were lost while the Department struggled to define its role in this matter. Given the Department of Labor's [DOL] preference for conciliatory, non-confrontational enforcement of labor protection stat-

utes, I am sure some officials in the Department were appalled at the prospect of taking on new enforcement responsibilities of this magnitude. Eventually the Department announced that compliance activity would be put off until October 15, 1985 in order to provide additional time for local governments to come into compliance.

We are fast approaching that self-proclaimed deadline and it is clear that many public officials are hoping for a new reprieve. It has been widely reported that the Chief Enforcement Officer of our wage and hour laws has been so reckless as to advise local officials at a recent conference in Milwaukee that they need not bother with compliance as the issue will soon be mooted by putative appropriations legislation. I believe it is constructive for us to advise the Department that the Education and Labor Committee will strongly resist any attempts to circumvent the normal legislative process in order to effectuate a quick fix outside the committee with appropriate jurisdiction.

If the Department of Labor is firmly convinced that a legislative remedy is necessary then it ought to begin the process of attempting to justify the relief sought with unimpeachable facts and figures to substantiate the need for such legislation. It is indeed curious that the Department's own Bureau of Labor Statistics has not been heard from in an area where its longstanding reputation for professionalism would go a long way toward establishing a reliable baseline estimate of budget impact on local governments. I understand that Members of the Senate Committee on Labor and Public Welfare have made a formal request of the Secretary to compile a Bureau of Labor Statistics [BLS] estimate as soon as possible. I certainly look forward to seeing the BLS figures when they are made available to the other body. I have made a similar request of the Congressional Budget Office [CBO].

Despite a large number of meetings with officials of public interest groups, states, cities, counties and other local governmental bodies, the subcommittee staff and I have had a difficult time obtaining reliable estimates of the budget impact that FLSA compliance will have on local governments. Given the importance of this issue both to local governments and their employees, the subcommittee feels that substantive remedial legislation, if warranted, ought to be supported by estimates of financial impact which can be verified The various estimates of impact received by the subcommittee to date range from minimal to disastrous, with no common denominator which would allow the subcommittee to extrapolate to reach a nationwide total. When the requested BLS and CBO figures become available we will certainly have a better appreciation for the true dimensions of this problem.

In the interim, the subcommittee hearing today will examine the effect of FLSA compliance on local governments. We hope to be able to construct an official record which will allow the committee to determine whether FLSA compliance in the public sector will present problems not anticipated when the Congress extended the act to local governments in 1966, and again in 1974. As I recall, our first witness, Mayor Koch, was a Member of Congress when the amendments, which eventually became known as the 1974 FLSA Amendments, we considered in 1972 and 1974. Hopefully our distinguished former colleague would be able to enligthen us with a first hand impression of congressional intent.

We will also be hearing testimony from labor officials at the local and national level. We have assembled several panels from a number of different public employee unions. I understand that some of the national unions have been attempting to analyze data from their public sector employers which they will share with us today. Some of our witnesses have also had the opportunity to negotiate collective bargaining agreements in compliance with the Act since the *Garcia* decision. I believe we could all benefit from their knowledge of how various issues can be resolved within the flexible framework of the FLSA.

Finally, I want to thank our representatives from the public sector. I do appreciate their taking time from their responsibilities at home to come to Washington. As a former State legislator myself, I look forward to their testimony of State and county perspectives on FLSA requirements for local governments.

Before we call our first witness, I will turn the microphone over to any of my colleagues on the subcommittee for any opening remarks they may care to make.

Mr. MURPHY. Since I am late, I will forego delivering my opening remarks. This is the first hearing concerning the Fair Labor Standards Act and the ruling by the Supreme Court in the *Garcia* v. *San Antonio* case, and we hope to have additional hearings, and to address this problem, since it apparently has become one in the minds of many municipality and county officials.

I have seated with me today, at the subcommittee hearing, the chairman of the full committee, Gus Hawkins. Mr. Hawkins, do you have an opening statement?

Mr. HAWKINS. I will follow suit and forego any statement at this time.

Mr. MURPHY. Thank you, Mr. Chairman.

In addition to Mr. Hawkins, we have the ranking minority member on the subcommittee, Tom Petri.

Mr. PETRI. I do have a statement.

Mr. Chairman, I welcome today's hearing on the Fair Labor Standards Act in the wake of the Supreme Court's decision in *Garcia* v. *San Antonio Metropolitan Transit Authority.* Like every Member of Congress I have already heard quite a lot about this decision and its impact on the people and communities in my district.

There, both employers and employees alike are concerned by the costs and restrictions imposed by this decision. I will be interested to hear some of the national perspectives represented here today.

Regardless of one's opinion of the *Garcia* decision, I think everyone would agree that it will have a substantial impact on State and local governments, in both constitutional and practical terms.

We are charged with taking a hard look at this impact; not just as Representatives, and not just as members of this subcommittee, but by the Court's decision itself. Underlying this decision is the belief that Congress, rather than the courts, should decide the limits of a largely unfettered Federal power to regulate commerce. While this reasoning is highly debatable, our obligation to address this issue remains.

As you know, the issue is a pressing one. On October 15, the Department of Labor will begin enforcing the *Garcia* decision for occupations affected by it. If Congress is to act, and I believe it should, we must do so prior to this deadline.

I hope that we will be able to listen to today's testimony and then proceed in the next few days to the drafting of legislation to at least postpone if not remedy the impact of the *Garcia* decision.

As one with a good deal of experience in State and local affairs, Mr. Chairman, I know you are acutely aware of the practical impact this decision will have on States, cities, and towns. I hope we can work together and with other interested parties to reach a reasonable resolution, on at least a temporary basis, to this problem.

Mr. MURPHY. Thank you very much, Mr. Petri.

We have also with us sitting on the subcommittee today Steve Bartlett of Texas.

Mr. BARTLETT. Mr. Chairman, first, I would like to commend the chairman for scheduling this hearing to discuss the major issues which have arisen in the aftermath of the U.S. Supreme Court's decision in *Garcia* v. *San Antonio Metropolitan Transit Authority.*

Much of the publicity of the implications of that decision has been on the financial burdens faced by States and municipalities throughout the Nation. And there is reason for us to be concerned about the additional costs which that would impose, costs which have been estimated to range as high as $2 to $3 billion.

In my own State, the Texas Municipal League has surveyed both small and large communities, where the financial impact ranged

from $20,000 in the east Texas town of Marshall, to $1.6 million in the city of Dallas, to $8 million in Houston.

With the chairman's permission, I would like to request that this survey done by the Texas Municipal League be inserted at this point as part of the hearing record.

As I indicated, we do have reason to be concerned about the financial implications of the *Garcia* decision for State and municipality governments. But in my opinion, we have more reason to be concerned about the decision's impact on the lives of public employees and on the taxpayers who pay their salaries.

The *Garcia* decision has the effect of eliminating compensatory time as an option for State and municipality employees throughout the country. This limits their flexibility, flexibility to work at another job, flexibility to have control over their work lives by having a say in how they prefer to be compensated for overtime hours which they incur.

More important for our public employees is the very real possibility that some of them could lose their jobs as a result of the *Garcia* decision. A number of cities may be forced to reduce their regular payrolls as municipalities search for ways to cut costs.

These layoffs would be detrimental not just to the public employees who would lose their jobs, but to every resident of the affected communities. These taxpayers would also be affected by the *Garcia* decision as they are faced with decreased services, such as fewer police patrols, or less frequent garbage and brush collection. The alternative would be higher State and municipal taxes to raise additional revenues.

Mr. Chairman, as you know, a number of bills have been introduced to deal with the impact of the *Garcia* decision. As we question witnesses this afternoon, I intend to ask them about certain concepts in some of those bills, including H.R. 3391, which I sponsored.

As we are all aware, the Department of Labor is scheduled to begin enforcing compliance with the Court's decision on October 15. It is urgent that this subcommittee, the full committee, and this Congress consider and approve legislation that will prevent the adverse impact faced by State and municipal governments, public employees, and taxpayers throughout the Nation.

Thank you, Mr. Chairman.

[The information follows:]

TEXAS MUNICIPAL LEAGUE—ESTIMATES OF ADDITIONAL FLSA COSTS (CITY AND ESTIMATE)

Abilene, $100,000 (FY 1986).
Amarillo,[1] $790,000 (FY 1986).
Arlington, $200,000 (FY 1986).
Austin, $1.5 million (FY 1986).
Beaumont, $360,000 (FY 1986).
Carrollton, $100,000 (April 1985 through October 1986).
Corpus Christi, $200,000.
Dallas,[1] $1.6 million (FY 1985).
Fort Worth, $980,000 (April 15, 1985 through FY 1986).
Garland, $200,000–$400,000 (FY 1986).
Houston, $8 million.

[1] After reduction of personnel hours to minimize costs.

Irving, $746,000 (FY 1986).
Lancaster, $50,000/year.
Lubbock,[1] $185,000 (April 15, 1985 through FY 1985); $211,000 (FY 1986).
Lufkin, $32,000/year.
Marshall, $20,000 (April 15, 1985 through April 15, 1986).
Midland, $50,000/year.
Odessa, $200,000 (October 15, 1985 through October 15, 1986).
San Antonio, $600,000 (April 15, 1985 through FY 1985); $750,000 (FY 1986).
Tyler, $246,000 (April 15, 1985 through FY 1986).
Waco, $240,000 (FY 1986).

Mr. MURPHY. Thank you.

We will proceed with our first witness, who is a former Congressman, and now mayor of the city of New York, Edward Koch, who represents the League of Cities and the Conference of Mayors. Mayor Koch, you may proceed.

STATEMENT OF HON. EDWARD KOCH, MAYOR, CITY OF NEW YORK, NY, REPRESENTING THE LEAGUE OF CITIES AND THE CONFERENCE OF MAYORS, ACCOMPANIED BY ROBERT W. LINN AND FRANCES MILBERG

Mr. KOCH. Thank you very much, Mr. Chairman, it is always a privilege to come back to Congress and to state the point of view of either myself as mayor, on behalf of many mayors, as I am today, representing both the National League of Cities and the U.S. Conference of Mayors, and I would like to file their full statement for the record, and briefly comment on my own, which tracks theirs, but which is in my own language.

Mr. MURPHY. Without objection, your entire statement will be included as part of the record.

Mr. KOCH. Also, to say to Chairman Gus Hawkins, how it is always a privilege to come back and to see him, to talk to him, to work with him, as I did over the 9 years that I was in the Congress and enjoyed them, so much.

I ought to introduce my colleagues. With me is Bob Linn, who is director of labor relations in the city of New York, and to my left is Frances Milberg, who is general counsel to the director of labor relations, in the course of its request, and I would hope you would permit them to answer questions, as well as myself.

I am pleased to represent the National League of Cities, the U.S. Conference of Mayors and the New York Conference of Mayors to discuss the detrimental effects of the Fair Labor Standards Act will have if applied to State and local governments under the Supreme Court decision in *Garcia* v. *San Antonio Metropolitan Transit Authority*.

In addition to my oral statement, I will be submitting a document which analyzes the decision's effect in greater detail.

Let me begin by saying that I support S. 1570, introduced by Senator Nickles and Senator Wilson. It would not exempt State and local governments from the minimum wage, but would exempt them from the act's overtime provisions.

It is a reasonable and fair way to minimize the damage that *Garcia* would inflict. The Fair Labor Standards Act has played and still plays a vital role in the American economy. It was enacted during the Great Depression, a time of open, often bloody warfare between labor and management.

Management was strong, while most workers were unorganized and unable to exercise bargaining rights. Federal help was urgently needed to secure minimum standards workers on their own could not win. Even in 1985, some workers in factories and on farms need the act's protections.

Today, many more workers are organized, have bargaining rights, and can protect themselves against bad management or can seek a bigger share of the economic pie.

As the mayor of a city with almost 300,000 unionized employees who has completed four rounds of bargaining, I assure you that labor fully exercises those rights in New York City, I assure you without a doubt.

"There is nothing in the overtime and minimum wage requirements of the Fair Labor Standards Act," the Court argued in *Garcia*, "that is destructive of State sovereignty or violative of any constitutional provision." In fact, it mandates wholesale intrusions on local or State powers.

Let me cite a few:

City employees in New York have a statutory right to bargain collectively, granted to them by the sovereign State of New York. The Supreme Court has never ruled that collective bargaining in New York intrudes upon the Federal domain.

A mandatory subject of such bargaining is overtime. Parties to our negotiations have agreed that employees will be compensated for overtime by cash or, in some cases, time off.

Applying the act to New York, however, will require that our employees get cash for overtime, regardless of arrangements reached at the bargaining table. Doesn't that intrude upon our right to bargain collectively and intrude upon New York State's right to permit collective bargaining? I think so.

Similarly, the hours of a firefighter or police officer must work before qualifying for overtime are also subject to bargaining in New York. The theory is that local managers and workers know the kinds of staffing necessary to effectively battle criminals and fight fires and that those needs will be addressed during bargaining.

Garcia presumes that the U.S. Department of Labor, not local officials, knows more about those needs and is better qualified to set the hours one must work before qualifying for overtime. It is a ridiculous presumption and yet another intrusion on local collective bargaining.

An issue of great concern outside New York is that many cities and towns supplement their public safety programs with volunteers such as auxiliary police or volunteer fire companies. We have 8,000 auxiliary police in the city of New York.

Under the act, volunteer fire fighters receiving a stipend of more than $2.50 a call or an auxiliary police officer performing duties similar to a paid officer must be treated as a paid employee of the city. This will add costs and will discourage, not encourage cities from using volunteers. That, in turn, will intrude on the way cities protect their citizens.

We have over 100,000 volunteers working in the city of New York. They don't get paid, they love their work. If we don't get

relief here, we won't be able to accept their services. I think that is outrageous.

How, then, can the Court say now that its decision to impose the act is not an intrusion upon our sovereignty or on the way local and State governments serve their citizens? Intrusion is the order of the day under *Garcia*.

Nor can *Garcia* be justified by saying "the attempt to draw the boundaries of State regulatory immunity in terms of 'traditional governmental functions' is not only unworkable but is inconsistent with established principles of federalism."

Maybe because I have served as both a Member of Congress and a mayor that boundary line is clear to me. Historically, it has reserved to State and local governments the right of collective bargaining. Our bargaining has not blurred the line. *Garcia* fudges it by mandating unwarranted Federal intrusion into State and local affairs.

Labor and management to the sidelines, collective bargaining be damned. That is the message sent by *Garcia*. Let the Federal bureaucracy, not collective bargaining, decide how much and in what ways employees are to be compensated.

State and local governments, of course, will foot the bill that *Garcia* incurs. It couldn't have come at a worse time. For 5 years, a "get out of Government, Federal Government" has been the rage in Washington.

Cities have borne more and more costs as the Federal Government has retreated from program after program. *Garcia* only imposes more costs for us to bear.

If S. 1570 does not pass and *Garcia* stands, the National League of Cities estimates America's cities will spend in excess of $2 billion to comply with the act. Chicago will have to spend $20 million to comply, Baltimore will spend $10 to $12 million, and Los Angeles will spend between $70 and $80 million.

New York City will spend $40 million a year. That is not petty cash, not only in New York City. We have a schedule attached to the U.S. Conference's report listing many more cities, and the costs entailed.

With $40 million, we could hire thousands of new police officers, teachers, and doctors. We could cut class sizes in our schools, build new homes in our neighborhoods, or bring new jobs to our cities; $40 million spent to scuttle protections already provided under bargaining, will be $40 million down the drain.

Garcia is unnecessary, expensive, and intrudes on federalism's longstanding division of powers. It should be applied only where worker rights are not secure. Local and State governments have been at the forefront of recognizing and protecting worker rights.

Indeed, 48 percent of public sector workers are organized, more than twice as many in the private sector. *Garcia* is trying to fix something that is not broken.

If *Garcia* stands, a day may come when things do break—to wit, State and local treasuries and the tradition of collective bargaining. The Congress can prevent those consequences today or it may be called upon to help pay for them later. For that reason, I urge you to join us in supporting S. 1570.

I would, at the conclusion, say that while I am not familiar with the text of Mr. Bartlett's bill, as he outlined it, many of the things that he said would be those things that we would be for, and we would be happy to have it analyzed and to get back to you, sir, to tell you what our position would be in detail.

Mr. MURPHY. Thank you very much, Mayor.

First, you laid heavy stress on volunteers. What do you pay your volunteers, these 100,000 volunteers?

Mr. KOCH. Some of them, for example, get a stipend. The auxiliary cops, the auxiliary cops get their clothing and other benefits, and that could be defined as coming within——

Mr. MURPHY. Does that amount to more than $2.50 a day for the number of days that they are called out?

Mr. KOCH. We think that it would, and those would be 8,000.

Mr. MURPHY. You realize that it is my opinion that the decision permits us to pay $2.50 or the actual expenses incurred, which would be established by receipts, if they are truly volunteers. Volunteer firemen in my community don't get paid any stipend, they are volunteers in the true sense of the word.

If you are enticing volunteers in New York, with uniforms or a stipend that exceeds $2.50 per call, then I have to ask you to consider, are they volunteers or are they replacement workers?

Mr. KOCH. May I answer that?

Mr. MURPHY. Yes.

Mr. KOCH. Mr. Chairman, we pride ourselves on encouraging people to volunteer.

Mr. MURPHY. If you offer them the carrot to volunteer, then are you replacing what otherwise would be workers?

Mr. KOCH. Well, I am going to respond to that. We have about 300,000 city workers, and we have about 100,000 volunteers.

Mr. MURPHY. You said you had 300,000.

Mr. KOCH. We have 300,000 city employees approximately, and we provide the services that a State provides because we are bigger than most States, 7.5 million people if you include the undocumented aliens, of which——

Mr. MURPHY. You include——

Mr. KOCH. There are somewhere between half a million and 750,000, according to U.S. Census, our population is at 7 million, not including them, we think it is probably closer to 7.5 million.

The auxiliary cops are the best illustration. At this moment, we have 27,000 police officers. We once had 30,600, and I hope some day we will have them back, as well. Every year since I have been here, since 1980, when we balanced our budget under GATT principles, we then began the slow climb back to restoration of service.

We haven't gotten there in the meanwhile, even though we have 27,000 cops, there are people who want to be able to be used in the nature of auxiliary, they don't carry guns, they are really the eyes and ears of the police force, we wouldn't hire them if they didn't volunteer, and at the same time, they want to be recognized and want to have a uniform, should we impose on them to go out and buy the uniform as well as volunteering their services? I don't think so.

Mr. MURPHY. Apparently they want to be paid.

Mr. KOCH. They don't want to be paid. We are not paying——

Mr. MURPHY. If they are not being paid, you have no quarrel, volunteers are all right.

Mr. KOCH. No, what I say is that——

Mr. MURPHY. As long as your volunteers are not paid in excess of their expenses or——

Mr. KOCH. We are paying them. No, that is not the way we read *Garcia* or what is proposed. We read *Garcia* and what is proposed that the money we give them to buy a uniform, that that and that comes out to more than $2.50 a day, that that would create this new status for them as working to be paid.

Mr. MURPHY. It must be pretty well attired.

Mr. KOCH. Well, that is hard to say. A worker, auxiliary cop, may work 1 day a week, nevertheless, he needs a uniform. We think it is helpful to the common protection that a guy who is out there without a gun have a uniform that gives him some public perception that he is a peace officer.

Mr. MURPHY. I don't quarrel with anything you say, Mayor, I believe in volunteerism, I believe in having them properly identified in uniform, I am submitting to you that if they work 52 days of the year, that more than pays for a uniform at $2.50 a day.

Mr. KOCH. I am simply saying, Mr. Chairman, assume for a moment, just for the purpose of discussion, that that which we give to the auxiliary police officers, 8,000 of them, in the form of uniform or some other aspect of that, whatever it is that, we don't give them a weekly check, and don't pay them by the hour and don't give them any money for that, but a sum what I have said is so, a sum for a moment that this legislation or the *Garcia* decision, that that means that those 8,000 officers are now to be perceived as city employees, would you be against it?

Mr. MURPHY. We can't perceive them to be a city employee.

Mr. KOCH. You don't decide the case when it comes before you. The fact is that the court may perceive them that way unless they are excluded. I am simply telling you we have 100,000 different volunteers who are rendering, there is some late—is for example, don't even know what they get by way of stipend who are forced to come in a couple of days in the course of a week because some of them—because they love the children, may come 7 days a week, and I have been to some of those programs.

Are we going to have to pay them? Supposing we can't pay them?

Mr. MURPHY. Not if your volunteers are the same in New York as they are in Pennsylvania.

Mr. KOCH. Well——

Mr. MURPHY. Our volunteers are volunteers. We don't entice them with money and a stipend, and we do give them a police hat if they are working the ball games on Friday night.

Mr. KOCH. I respectfully disagree with you.

Mr. MURPHY. What we are talking about is paying them. You have a total payroll of $10 to $12 billion.

Mr. KOCH. Well, we have a budget, a city budget of $12 billion, of which about 55 percent would be personnel costs.

Mr. MURPHY. So, you would say about $6 to $7 billion in the neighborhood of personnel costs?

Mr. KOCH. Yes—no, no, $20 billion.

Mr. MURPHY. $20 billion. So, $12 to $15 billion could be your——

Mr. KOCH. Roughly 55 percent.

Mr. MURPHY Now, you indicate the impact in New York is approximately $39 million?

Mr. KOCH. Yes, sir.

Mr. MURPHY. That would be under one-half of 1 percent of your total city payroll. Now, is this one-half of 1 percent going to so disturb your $20 billion budget?

Mr. KOCH. Let me explain why it does, Mr. Chairman, and I didn't know this before I became mayor, I was in the same position that you are now, unless you were a mayor before, to know that most of the money—that the stipend is uncontrollable.

You have an uncontrollable here, in various programs, that you can't limit. The people have a right, once you have created that program, no matter how many there are. So, while I cannot give you the accuracy, say, at this moment, a very small part of our budget is controllable, a very small part, and therefore, when we have to, each year, look to see how we can close our budget, because we live under the most stringent, there is no other city in America that lives under our gap balanced budget principles, accounting principles, it is very, very tough, but it is good for you, it is like castor oil once, it is good for you.

And now, when we put our budget together, and file our financial plan, when we have to save $25 million, it is an enormous struggle, because let's take social services, which is the largest part of our program.

It is the Human Resources Administration. It is about 25 percent of our total budget, and education is 24 percent of our total budget we have, you have 50 percent of our total budget you can't cut any dollars.

Neither of those programs have been cut, even at the height of our fiscal crisis, I can't remember that we actually reduced programs, I can't remember that, maybe we—all I can tell you, every year they go up and understandably, we want better understanding, education, and we want social services to be provided to the poor.

As you get down into all these other programs, you find there is very little to cut, I am simply saying $40 million, even in the big city of New York, is big time.

Mr. MURPHY. It is $40 million?

Mr. KOCH. That is right.

Mr. MURPHY. Now, Mayor, I remember my first year here, I considered you a very intelligent and learned Member of Congress.

Mr. KOCH. I hope you still do, Mr. Chairman.

Mr. MURPHY. And I still do. I also believe that you voted for these amendments in 1974.

Mr. KOCH. I did. That was the Icord amendment.

Mr. MURPHY. There was a series of amendments, you supported it every time. I know that the hands-on experience you are having as chief executive and administrator of your city, perhaps you see things differently.

Mr. KOCH. Let me explain that that is something that in the beginning, I was a little embarrassed about. I have been here many times since I became the mayor.

Mr. MURPHY. Have you changed your philosophy on the protection of public employees?

Mr. KOCH. No, I haven't changed my philosophy one wit. I have gotten wiser, not smarter, let me explain to you what I mean by that.

When I was a Member of Congress, and I was a Member here for 9 years, and you know, I think most people then and most people in the city of New York today, would say my social philosophy hasn't changed, I am for helping the poorest of the poor, I am for doing everything that is decent and that you would point to and say that is going to get you into heaven, to put it into its best terms.

When I was in Congress, nobody told me what these things cost.

Mr. MURPHY. Nobody told you how to get to heaven, then?

Mr. KOCH. No, I will tell you what heaven meant, Mr. Chairman, when I was in Congress. When I was in Congress, it meant that all of the special interests would come in, whether it would be a union or management or the elderly or the people for helping the young, or any or all of the good people in the world, and they would come in and they would tell me this is the way to get reelected.

That was heaven. Now, that is what heaven was when I was in the Congress. How do you get reelected. That is not really heaven, Mr. Chairman, heaven is doing——

Mr. MURPHY. It is revelation.

Mr. KOCH. Heaven is doing an intelligent job for your constituents and sometimes that means——

Mr. MURPHY. Then getting reelected.

Mr. KOCH. Yes, and you will, when you do that, because most people have common sense. So when I was a Member of Congress, when I don't know the word special interest as pejorative, everyone has some special interest, some people use it in the pejorative way, I do not, when a group would come in and they would tell me what it was that they wanted, and it was always dressed up in a form of this is good, this is really good, Ed, and it really helps people, it does, some people, the particular people of that particular group.

And many times they should be helped, particularly the poorest of the poor.

But, if you now look at it, you have to look at it not is it necessarily good for a particular group, is it good on balance for everyone, and who pays for it? If, by paying for it, you are going to reduce services to some other group, is that right, sometimes it is.

So, if you ask me how is it that I would have voted for the Icord proposals in those times, any time anyone from the union would come in and say, Ed, this is good, I would vote for it.

I am happy to tell you that. They never told me that it was bad. I have never heard any group come in and say, Ed, I want to tell you this is bad, but we want you to vote for it anyway; what they would say, and as a Member of Congress, nobody told me how much it cost, then I became the mayor, and I realized all these things that I as a Congressman wanted to impose on the city of New York, I was telling the mayor, find the money, in all these good programs, this is one of them.

Mr. MURPHY. Mayor, you had mentioned—let's get on to some specifics. You had mentioned your collective bargaining agree-

ments. Now, what number of hours in the work week is in your city wide agreement.

Mr. KOCH. I have to turn to Bob Linn to be specific on that.

Mr. LINN. Let me, if I might start, we bargain with virtually all of the city employees, that we have virtually all of the 300,000 employees, except for about 1 or 2 percent are in collective bargaining. They are represented by I believe some of the most sophisticated and toughest and best union leaders in the country.

Mr. KOCH. Some of them, you will see today.

Mr. LINN. One is coming right behind you. We have negotiated with the Victor Godbaum AC-37 contract that covers all of the civilian employees. That has established various relationships of how people earned overtime, and there are provisions for voluntary overtime and involuntary overtime.

For employees that work between 35 and 40 hours, if employees are asked to work involuntary overtime, they are paid straight time cash for that period of time.

Mr. MURPHY. What is your basic, your number of hours?

Mr. LINN. Basic number of hours for the civilians, 35 hours.

Mr. MURPHY. I think that is what I am trying to get at, your entire work week is 35 hours, between 35 and 40 hours, what do you pay?

Mr. LINN. If it is involuntary overtime, if we say to an employee, you must work, we pay them straight time cash for that period between 35 and 40.

Mr. MURPHY. Straight time or time and a half?

Mr. LINN. Straight time.

Mr. MURPHY. If it is involuntary?

Mr. LINN. If it is involuntary, it is straight time.

Mr. MURPHY. Between 35 and 40 hours, above 40 hours.

Mr. LINN. I will get to the above.

Mr. MURPHY. Now, do you pay no time and a half, or comp time, in the 5-hour period?

Mr. LINN. For that 5-hour period for voluntary overtime, if we say to an employee, you can work a couple of extra hours this week, in that circumstance, if the employee chooses to work, we would pay straight time, compensatory time.

Mr. MURPHY. There is nothing in the *Garcia* case or Fair Labor Standards Act that interferes with this collective bargaining right, you have 35 going in, until you get to 40 hours.

Mr. LINN. That is right.

Mr. MURPHY. So, any facts and figures or complaints about collective bargaining you have, are not applicable to your first 5 hours of overtime?

Mr. LINN. That is right, and our $40 million calculation does not apply to that 5-hour period, it applies to just that time worked over 40 hours.

Mr. MURPHY. This is where we are having some difficulty here, committee staff and myself, acquiring the methodology that is being used by municipality and State governments in calculating their costs. The costs seem to have risen abruptly, $40 million, $80 million, so forth. We have asked the Congressional Budget Office to give us their assessment of this impact. It is important to us, Mayor, what we thrust on you, if we are thrusting anything on

you. We don't want the words, "Cry Wolf," to appear if a wolf is really not there.

Mr. KOCH. Very fair.

Mr. MURPHY. Would you provide us with the methodology that you used in your $40 million figure so that we can come to some reasonable analysis of what you have done?

Mr. LINN. Certainly, and if I might explain for a minute, then we will supply it, of the $40 million we accumulated about half of it is uniform force overtime, which at this point is a volunteer decision of whether the uniform forces chose to take volunteer time to compensatory time or cash.

Mr. MURPHY. Volunteer on whom, on the person?

Mr. LINN. On the personnel.

Mr. MURPHY. Whereupon your administration, you may deny that voluntary overtime?

Mr. LINN. It is a right by contract if they chose the compensatory time, they have the right to have that compensatory time.

Mr. MURPHY. Up to what level of hours?

Mr. LINN. Any number of hours over the overtime work in the uniformed forces and what we did in——

Mr. MURPHY. You mean they can dictate to you, you have agreed to that in collective bargaining, they can tell you, "I am going to work 60 hours this week, because I have to get a new refrigerator"?

Mr. LINN. No, the overtime is not dictated by the employee, the overtime is dictated by the employer, but the choice of whether to take that overtime, as whether or not this ordered overtime is taken in compensatory time or cash, that is the choice of the employee.

For the uniformed forces, that represents about half of our costs, about $20 million total.

Mr. MURPHY. Do your supervisors find that that overtime is required?

Mr. LINN. The overtime, it is required.

Mr. MURPHY. That those additional hours are necessary.

Mr. KOCH. If I may, the election to do overtime is not the employees election; the management, government says, we need you for overtime. The option is on the part of that police officer, do they get cash?

Mr. MURPHY. Or compensatory time?

Mr. KOCH. It is we who decide we need the overtime on that particular occasion.

Mr. BARTLETT. Would the Major yield?

Mr. KOCH. Yes, sir.

Mr. BARTLETT. First, do you have any sort of estimate on what percentage of your employees in the uniformed services do elect cash and what percentage elect compensatory time, and, second, has that been paid at straight time or time and a half?

Mr. LINN. For the uniformed forces, they work 40 hours a week, that is time and a half, either cash or compensatory time. We can get for you the percent of the overall costs and the compensatory time and we will submit that.

That is a very straightforward calculation. I simply take the number of hours that are now given as comp time and have cash. That is how we derive that cost, as application to the city.

Mr. BARTLETT. My question is approximately what percentage chose which?

Mr. LINN. I don't have this with us. We will supply that to you.

Mr. BARTLETT. Thank you.

[The information follows:]

NOV 27

The City of New York

OFFICE OF MUNICIPAL LABOR RELATIONS

110 CHURCH STREET NEW YORK, N.Y. 10007

ROBERT W. LINN
Director

HARRY KARETZKY
1st Deputy Director

JAMES F. HANLEY
Deputy Director

FRANCES MILBERG
Deputy Director and General Counsel

DONNA GWYNNE
Employee & Management Benefits Director

November 26, 1985

Honorable Austin J. Murphy
Chairman
Committee on Education and Labor
U.S. House of Representatives
B-346A Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Murphy:

I am enclosing the information requested in your letter of November 19, 1985. This information had previously been forwarded to the Congressional Budget Office at that agency's request. The Budget Office made contact with us immediately following the hearing and informed us that it would be analyzing the information that we had agreed to submit to your Committee on the cost impact of the FLSA on state and local governments. We believed therefore that the Congressional Budget Office was the proper recipient of the information. At the same time we also forwarded the information to Congressman Bartlett, and in both cases offered to supply any additional information requested. The primary document for your reference and inclusion in the record of the Subcommittee's hearings is: Fiscal Impact of Garcia Decision.

The information herein enclosed is everything that was requested at the hearing and is identical to that which was sent to Terry Gullo of the Congressional Budget Office and to Congressman Bartlett. We wish to add that the percentage of Police Officers electing compensatory time was 26.5 and that of Correction Officers 2.7. This refers to the question on pages 28-29.

The failure to get the requested information directly into your hands was, as you see, due to our inexperience with the Congressional process and I regret it. If you have any further questions or desire additional information, please contact me at (212) 618-8282.

Very truly yours,

Robert W. Linn

ROBERT W. LINN

NYC
FISCAL IMPACT OF GARCIA DECISION

Uniformed Employees	
Police (NYPD, HAP, TAP)	
Schedules resulting in over 171 hours in a 28 day period	$ 382,921
Inclusion of Night Shift Differential into overtime rate	1,422,882
Conversion of Compensatory hours to cash	11,791,508
Total Police	$13,597,311
Correction	
Schedules resulting in over 171 hours in a 28 day period	16,970
Inclusion of Night Shift Differential into overtime rate	1,015,944
Conversion of Compensatory hours to cash	823,712
Total Correction	$ 1,856,626
Fire	
Inclusion of Night Shift Differential into overtime rate	$ 2,345,999
Civilian Employees	
Fire Dispatchers	$ 183,263
Community Service Aides (Fire)	58,216
Houseparents (worst case scenario)	716,695
Per Diem Institutional Aides	120,691
All other Non-Exempt Civilian Employees (Conversion of Compensatory time to cash, inclusion of Night Shift Differential into overtime rate, unathorized overtime, etc.)	20,853,000
Total Civilian	$21,931,865
Total Cost	$39,731,801

10/4/85

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POLICE OFFICERS

Average Regular Hourly Rate

	$27,336.00	FY84 Salary Average Police Officer (P.O.) includes N.S.D.
	x 1.1236	wage increase FY85 & FY86
	$30,715.00	Adjusted annual salary - FY86
Divide	2,088.00	No. of hours per year
	$14.71	hourly rate
	.5	half time calculation
	$7.36	half time rate

Work Time

1)	Schedule work time (No. of Tours)		243
	Less:		
	Vacation	27	
	Average Sick and Line of Duty Injury	9	
	Personnel Leave Day, etc.	2	38
	Work Time (No. of Tours)		205

Percentage of Time a P.O. works 205/243 equals 84.4%

Work Charts

5 work charts in NYCPD schedule over 171 hrs. of work in a 28 day period Patrol

1) 9 Squad Chart		4,953
2) 2 Platoon Rotating day off Chart (243 tours)		4,689
3) 1 Platoon Rotating day off Chart (243 tours)		1,406
	Patrol	11,048

Non-Patrol

4) Harbor 18 Squad Chart	68
5) MISD (12 hr. tours)	29
	11,145 of 19,381 P.O.

Work Schedule Over 171 hours in a 28 day period

There are three (3) Patrol Charts that average three (3) twenty eight (28) day periods annually of 171 hours 40 minutes of work.

Patrol Chart Impact

Three (3) twenty eight (28) day periods of 171 hours 40 minutes equals 120 minutes or two hours.

11,048	Police Officers
x2	hours over 171 hour period annually per P.O.
22,096	gross hours over 171 hours annually
x.844	Percentage of work time
18,649	net hours over 171 hours annually
x$7.36	half time rate
$137,257	Cost impact

Harbor Unit Impact

This 18 Squad Chart averages two (2) 176 hour periods in scheduled work time annually, This results in ten hours over the 171 hour maximum on an annual basis.

68	No. of P.O.s assigned
x10	hours over 171 hour
680	gross hours over 171 hours annually
x.844	Percentage of work time
574	net work hours over 171 hours annually
x$7.36	half time Rate
$84,225	cost impact

Computer MISD Impact

This work chart has twelve (12) hour tours and averages two (2) - 180 hour periods of scheduled work time in 28 day periods annually, or 18 hours over the 171 hour maximum annually.

29	No. of P.O.s assigned
x18	gross hours over 171 hours in 28 day period
522	gross hours over 171 hours
x.844	Percentage of work time
441	Net hours over 171 hours annually
x$7.36	half time rate
$3,246	Cost impact

Patrol Chart Impact		$137,257
Harbor Unit Impact		84,255
Computer Impact		3,246
	TOTAL	224,728
		1.53
	TOTAL COST	$348,800

Transit Police Officers Chart Cost

There are seven (7) charts that schedule work in excess of 171 hours in a 28 day period

Group 1 Charts 01, 09, 05, 04, 03 averages 171 hours 40 of scheduled work time two and sixteen hundredths (2.16)-twenty eight (28) day periods annually, that this results in 86.4 minutes over 171 hour maximum each year. 86.4 minutes equals 1 hour 26.4 minutes which converts to decimal form of 1.44 hours.

Chart Nos.	No. of P.O's
01	452
09	58
05	19
04	350
03	208
	1087

1,087	No. of P.O. assigned
x 1.44	Gross hours over 171 in 20 day periods
1,565	Gross hour over 171 hours
x.844	Percentage of work time
1321	Net hour over 171 hours annually
x $7.36	half time rate (assume same as NYCPD)
$9,723	cost impact

Group 2 Charts 07, 08 average 171 hours 40 minutes of scheduled work time five (5) twenty eight (28) day periods annually. This results in 300 minutes over the 171 hour maximum each year.

Chart Nos.	No. of P.O's
07	52
08	201
	253

200 minutes equal 3 hours 20 minutes converted to decimal form of 3.33

253	No of P.O.s assigned
3.33	gross hours over 171 hours
842	gross hours over 171 hours annually
x.844	Percentage of work time
711	Net hours over 171 hours annually
x $7.36	half time rate (assume same as NYCPD)
5,232	cost impact

CHART COST	
Group I	$ 9,723
Group II	5,233
	$14,956
Pension & FICA	x 1.41
	$21,088

Housing Police Department

Chart Impact

One chart exceed the 171 hour-28 day period maximum. It is a six (6) squad chart with a 72 day cycle, 1,026 P.O.s are assigned of 1,508 P.O.s.

This chart averages 171 hours 40 minutes of scheduled work time, Two and sixteen hundreths (2.16)- Twenty eight (28) day periods annually. This results in 86.4 minutes over the 171 hour maximum each year. Coverted to decimal form of 1.44 hours.

1026	No. of P.O.s assigned
1.44	gross hours over 171 hours
1477	gross Hours over 171 hours annually
.844	Percentage of work time (Assume same as NYCPD)
1247	Net hours over 171 hours annually
x$7.36	half time rate
$9,178	
x 1.42	Pension and FICA
$13,033	Cost impact

NYCPD	$348,800
TAPD	21,088
HAPD	13,033
	$382,921

Police Officers

Night Shift Differential - Currently, police officers (P.O.s) who complete a day tour and work overtime into a night tour, are eligible for overtime pay, but not night shift differential under the collective bargaining agreements. P.O.s who work a night tour and, continue working into the following day tour receive night shift differential and an overtime payment that includes night shift differential in the "regular rate". Our costing assumes a liability for the first category-- day officers who work into the evening and become eligible for overtime payments which do not include the night shift defferential in the "regular rate". We computed a cost of $1.4 million, but believe this to be gray area.

For the three City police departments, the costs are as follows:

NYPD	$1,344,425
Housing Police	30,590
Transit Police	47,867
	$1,422,882

Inclusion of Night Shift Differential into OT Rate (NYC Police, Housing Police Transit Police)

New York City Police

$23,698,410	FY 84 Patrol Officers Overtime
x .33	Overtime payment for which night shift was excluded from regular rate
$7,820,475	
x .10	night shift differential rate
$ 782,048	
x 1.1236	collective bargaining increases - 2 yrs. through FY 86
$ 878,709	
x1.53	FICA/Pension
$1,344,425	Total cost of inclnding night shift

Housing Police

$ 580,967	FY 84 Patrol Officers Overtime
x.33	Overtims payments for which night shift was excluded from regular rate
$ 191,719	
x.10	night shift differential rate
$ 19,172	
x1.1236	collective bargaining increases - 2 yrs.
$ 21,542	
x1.42	FICA/Pension
$30,590	Total cost of including night shift

Transit Police

$ 915,551	FY 84 Patrol Officers Overtime
x.33	Overtime payment for which night chift was excluded from regular rate
$ 302,132	
x.10	night shift differential rate
$ 30,213	
x 1.1236	collective bargaining increases - 2 yrs.
$ 33,948	
x1.41	FICA/Pension
$47,867	

Conversion of Compensatory Hours to Cash for New York City Police, Housing Police and Transit Police

New York City Police	
309,646	FY 84 hours worked for which compensatory time was granted
x .74	Patrol Officers as percentage of all New York City Police Officers
x 1.5	additional half time to equal time and one half
x14.71	hourly rate as of FY86
$5,005,931	
xi.53	FICA/Pension
$7,935,574	
Housing Police	
48,171	FY 84 hours worked for which compensatory time was granted
x.82	Patrol Officers percentage of all Housing Police Officers
$ x1.5	additional half-time
x14.71	hourly rate as of FY 86
$ 871,572	
x1.42	FICA/Pension
$1,237,633	
Transit Police	
158,000	compensatory hours earned (Note: This number has already been inflated by 1.5)
x.86	Patrol Officers percentage of all Transit Police Officers
$x14.71	hourly rate as of 7/1/83
$1,998,795	
x 1.41	FICA/Pension
$2,818,301	
$11,791,508	Total Conversion of Compensatory Time

Pursuant to contract, police officers may choose to receive time and one half in either cash or compensatory time. Our analysis shows the actual number of overtime hours worked for which compensatory time was requested (In the case of the Transit Police, records showed compensatory hours earned; this number inflates actual hours worked by 1.5)

Correction Chart

Correction Officers
(C.O.'s)

Correction Officer Salary

Average Regular Hourly Rate

	$26,594	FY84 Salary Average Correction Officer (P.O.) includes N.S.D.
	x1.1236	wage increase FY85 & FY86
	$29,881	Adjusted annual salary - FY86
Divide	2,088	No. of hours per year
	$14.31	hourly rate
	.5	half time calculation
	$7.16	half time rate

Work Time					
Schedule Work time (No. of tours)			245.00		253.00
Less:					
Vacation		27.00		27.00	
Average Sick		14.62		14.62	
Other Leave	(No. of tours)	2.00	43.62	2.00	43.62
			201.38		

209.38

Percentage of work time

$\frac{201.38}{245.} = .82$

$\frac{209.38}{253.} = .826$

Average of work time

.82
+.826
1.646
x.5
.823 82.3% of work time

Brooklyn Cts.

This chart averages 173 hours 15 minutes of scheduled work time four (4) twenty eight (28) day periods annually.

2.25 hours over 171 hours in 28 day periods
x 4 No. of 28 day period
9.00 gross hours per C.O. over 171 hours annually
x 76 No. of C.O's assigned
684
.823 Percentage of work time (assume same as police)
513 Net hours over 171 hours annually
x$7.16 half time rate
$3,673
x 1.41 Pension & FICA
$5,179 Cost impact

Queens Ct.

This chart averages 173 hours 15 minutes of scheduled work time two (2) twenty eight (28) day periods annually.

2.25 hours over 171 hours in a 28 day period
x 2 No. of 28 day periods
4.5 gross hours per C.O. over 171 hours annually
x 82 No. of C.O.'s assigned
369 gross hours over 171 hours annually
.823 Percentage of work time
304 Net hours over 171 hours annually
x$7.16 half time Rate
$2,177
x 1.41 Pension & FICA
$3,069 Cost impact

Bronx Cts. This chart averages 173 hours 15 minutes of scheduled work time five (5) twenty eight (28) periods annually.

There is an average of five (5) 28 day periods per year when the schedule exceed 171 hours by 2 hours and 15 minutes (which equals 2.25)

2.25	hours over 171 hours in 28 day periods
x 5	No of 28 day periods
11.25	gross hours per C.O. over 171 hours anually
x 60	No. of C.O.'s assigned
765	gross hours over 171 hours annually
.823	Percentage of work time
630	net hours over 171 hours annually
x$7.16	half time Rate
$4,511	
x 1.41	Pension & FICA
$6,360	Cost impact

Manhattan Cts.

This chart averages 178 hours 51 minutes of scheduled work time .3094-twenty eight (28) day periods annually.

7.85	hours over 171 hours in 28 day periods
x.309	No of 28 day periods
2.43	gross hours per C.O. over 171 hours annually
x117	No. of C.O.s assigned
284	gross hours over 171 hours annually
x.823	Percentage of work time
234	net hours over 171 hours annually
x$7.38	half time Rate
$1,675	
x 1.41	Pension & FICA
$2,362	Cost impact

Correction Chart Cost

Bklyn	$ 5,179
Queens	3,069
Bronx	6,360
Manhattan	2,362
TOTAL	$16,970

CORRECTION OFFICERS

Night Shift Differential - Currently, according to contract, Correction officers (CO's), who complete a day tour and work overtime into a night tour, are eligible for overtime pay under the collective bargaining agreement but not night shift differential. CO's who work a night tour and continues working into the following day tour, receive night shift differential and an overtime payment that includes night shift differential in the "regular rate". Our costing assumes a liability for the first category- not day officers who work into the evening and become eligible for overtime payments which do not include the night shift differential in the "regular rate". We have computed a cost of $1 million, but believe this to be gray area.

For the Correction Officers, the costs are as follows:

$19,256,649	FY84 Overtime C.O.
x .333	Overtime payment for which night shift differential was excluded from regular rate
$ 6,412,246	
x.10	Night Shift Differential rate
$ 641,246	
x 1.1236	Collective Bargaining increase 2 yr. thru FY86
$ 1,015,922	Cost impact

CORRECTION OFFICERS

Conversion of Compensatory Time to Cash

These numbers were computed by using data from the Payroll Management System (PMS) for approximately a 3 month period. The difference between overtime earned and overtime paid in of 2.7% (of all overtime).

The conversion of compensatory hours to cash is as follows:

$19,256,649	FY 84 Cash Overtime
x1.1236	Collective Bargaining FY86
$21,636,771	
x .027	Difference between earned overtime and cash overtime
$ 584,193	
x1.41	Pension & FICA
$ 823,712	Cost impact

FIREFIGHTER

Night Shift Differential - Currently, firefighters, who complete a day tour and work overtime into a night tour, are eligible for overtime pay, but not night shift differential under the collective bargaining agreements. Those who work a night tour continue working into the following day tour, receive night shift differential and an overtime payment that includes night shift differential in the "regular rate". Our costing assumes a liability for the first category-- day officers who work into the evening and become eligible for overtime payments which do not include the night shift differential in the "regular rate". We have computed a cost of $2.3 million, but believe this to be gray area.

For the Firefighter, the costs are as follows:

$27,293,215	FY84 Overtime firefighter
x .50	Overtime payment for which night shift differential was excluded from regular rate
$13,646,608	
x .10	Night shift differental rate
$ 1,364,661	
1.1236	Collective bargaining increase 2 years thru FY86
$ 1,533,333	
1.53	FICA & pension
$ 2,345,999	Cost impact

FIRE ALARM DISPATCHERS
(FAD's)

157 FAD's

	24,123	- FY84 average salary
Assuming 5% increase per year	x1.1127	
	26,842	FY 86 Rate
Divided	2088	No. of hours worked annually
	$12.86	hourly rate
	x .5	half time calculation
	$ 6.43	half time rate

The Dispatchers' work chart has 12 hour work days. The following is the No. of 7 day periods over 40 hours in a 7 day period:

Scheduled Work Time

No. of. 7 Day Periods over 40 hours annually	No. of hours Scheduled over 40 hours in a 7 day week	No of hours Over 40 Hrs. Per Year
18.72	8 hours	149.76 hours
4.16	3 hours	12.48 hours
6.24	1 hours	6.24 hours
		Total 168.48 hours

168.48	hours over 40 hours annually for each FAD
x 157	No. of FAD's assigned
26,451	gross hours over 40 hours per week
x .872	Percentage of work time
22,801	gross hours over 171 hours
x$6.43	half time rate
$146,610	
x 1.25	Pension & FICA
$183,263	Cost impact

FIRE SALVAGE
80 Community Assistants

Salary

	$15,073	FY86 Annual Salary 7/1/85
Divide	2088	annual work hour
	$ 7.22	hourly rate
	x .5	half time calculation
	$3.69	half time rate

Work Time

Schedules

2088	hours annually
- 170	hour average vacation
- 88	hour average FD sick leave (all civilians)
1830	work time

1830/2088 equals 87.64% percentage of work time

The Community Assistants' work chart schedules 8 hours over the 40 hour weekly maximum twenty three (23) times a year when there is for a gross total of 184 hours a year.

184	No. of hours over 40 hours annually per employee
x80	No. of salvage employees
14,720	gross hours over 40 hours per year
x .8764	Percentage of work time
12,901	gross hours over 40 hours annually
x$3.61	half time rate
$46,573	
x 1.25	Pension & FICA
$58,216	Cost impact

Currently, less than full time Institutional Aides (IA's) employees receive straight time for hours worked. This calculation assumes an upgrading to time and one-half for hours worked over 40 in a 7 day period.

Per Diem Institutional Aides

600 hrs.	total hrs. over 40 per week
x 52.2	wks. in year
x $3.67	additional half time
$114,944	Total
x 1.25	FICA/Pension
$143,680	Total
.84	Conversion to City Funds Cost
$120,691	Total Per diem Cost

Houseparent (Worst Case)

Salary: $18,200 $1,274,005/70 = $18,200

261 days/year
x24 hours/day
6,264 hours/year

Minimum Wage

$18,200/6,264 hours = $2.91/hour

Minimum wage is $3.35/hour

Difference .44/hour
x6,264 hours/year
x70 houseparents
$192,931

Overtime 261 days/year
x16 overtime hours/day
x70 houseparents
x$1.775 additional half time
$489,636

682,567
x1.25 FICA/Pension
$853,209
.84 City Funds
$716,695

All Other Non-Exempt Civilian Employees
(Conversion of Compensatory Time to Cash for Hours Over 40, Inclusion of Night Shift Differential and Half-Time Holiday Premium into Overtime Rate, Preliminary Postliminary Activities, Unauthorized Overtime, etc.)

All Funds CY 1984	Overtime ($ in 000)
$25,692	Mayoralty
781	Board of Education
407	City University
22,025	Health & Hospitals Corp.
19,108	Housing Authority - non uniformed
34	Transit Authority - non uniformed
332	Libraries
6,447	Off-Track Betting Corp.
$75,826	
x1.1127	Collective bargaining FY85 & FY86
$84,373	Adjusted for collective bargaining
x .84	City Funds
$63,694	
x.22*	FLSA OT liability factor for compensatory time etc.
$16,924	
x 1.25	FICA/Pension
$20,853	Cost of Compensatory Time, etc.

*The .22 factor is an unusually conservative estimate that was arrived at by assuming that 25% of all paid overtime would be earned as compensatory time which would then have to be converted into cash. That 25% figure was further reduced by 20% to take into account the fact that certain titles in which overtime is earned are not covered by the FLSA. An additional 2% was taken to cover the impact of unauthorized overtime and other items for which liability will be incurred and various fringe benefit items like holiday pay and night shift differential and other items in the base to calculate overtime.

The City of New York

OFFICE OF MUNICIPAL LABOR RELATIONS
110 CHURCH STREET, NEW YORK, N.Y. 10007

ROBERT W. LINN
Director

HARRY KARETZKY
1st Deputy Director

JAMES P. HANLEY
Deputy Director
FRANCES MILBERG
Deputy Director and General Counsel
DONNA OWYANG
Employee & Health Benefits Director

October 8, 1985

Terry Gullo
Congressional Budget Office
House Office Building Annex 2
Room H-2444
Second & D
Washington, D.C. 20515

Re: New York City Costing of FLSA Impact

Dear Ms. Gullo:

Enclosed is a detailed analysis of the cost impact of the application of the Fair Labor Standards Act to New York City government. I am also enclosing a booklet which summarizes collective bargaining costs in New York City as it provides the numbers of employees in various categories and payroll costs for those categories of employees with and without FICA and pensions and some of the collective bargaining provisions which are impacted by the FLSA.

These numbers do not include any costing for the following items:

1. Most importantly, increased administrative costs which we believe will be substantial. The calculation of the overtime compensation under the Act may require a complete change in the present payroll system and the application of the Act will require enormous changes in the City's recordkeeping systems, as well as additional staff people to implement and monitor compliance with the FLSA.

2. Volunteers who might be affected by the Act.

3. Groups like Detectives, Fire Marshals, and Uniformed Superior Officers who may argue that they are covered by the Act. Detectives are presently subject to a 100 hour cap on cash compensated overtime.

4. Hours worked between 35 and 40 hours a week.

5. Non-work time such as sick leave or vacation in the calculation of overtime compensation.

6. The City has no contractual obligation or past practice requiring it to compensate Correction Officers for preliminary and postliminary time, including uniform change. We do not believe that there is any liability and thus have not included the $2-1/2 million cost that would be incurred if one assumed 15 minutes for uniform change alone.

7. Overtime compensation for uniformed employees under the collective bargaining agreements does not include night shift differential. We have included an adjustment for the inclusion of night shift differential in our uniformed costs even though it may be a gray area.

8. Any additional costs for uniformed sanitation workers, including items such as night shift differential that might arguably go into the "regular rate" under the Act to calculate overtime pay.

If you need any additional information, please feel free to contact Judy Chesser in New York City's Washington Office.

Very truly yours,

Frances Milberg

FRANCES MILBERG

FM/bas
Enclosure

THE CITY OF NEW YORK
OFFICE OF MUNICIPAL LABOR RELATIONS
250 BROADWAY
NEW YORK, N.Y. 10007

BRUCE McIVER
DIRECTOR

TO: HEADS OF ALL AFFECTED CITY DEPARTMENTS AND AGENCIES

FROM: BRUCE McIVER, DIRECTOR OF MUNICIPAL LABOR RELATIONS

SUBJECT: EXECUTED CONTRACT: Correction Officers

TERM: July 1, 1980 - June 30, 1982

Attached for your information and guidance, is a copy of the executed contract entered into by the Director of Municipal Labor Relations on behalf of the City of New York and Correction Officer's Benevolent Association on behalf of the incumbents of positions listed in Article I of said contract.

The contract incorporates the terms of an agreement reached through collective bargaining negotiations and related procedures.

DATED: November 19, 1982

BRUCE McIVER

OFFICE OF MUNICIPAL LABOR RELATIONS
REGISTRATION
OFFICIAL CONTRACT

NO: 33 113

DATE: NOV 19 1982

entitled "Regulations Regulating the Checkoff of Union Dues" and in accord with the Mayor's Executive Order No. 99, dated May 15, 1969 entitled "Regulations Governing Procedures for Orderly Payroll Checkoff of Union Dues" and any executive orders which amend or supersede said Executive Orders.

Section 3.

An employee may consent in writing to the authorization of the deduction of dues from his wages and to the designation of the Union as the recipient thereof. Such consent, if given, shall be in a proper form, in accord with Section 2 of this Article II, which bears the signature of the employee.

Section 4.

The parties agree to an agency shop to the extent permitted by applicable law, as described in a supplemental agreement hereby incorporated by reference.

ARTICLE III - HOURS AND OVERTIME

Section 1.

All ordered and/or authorized overtime in excess of forty (40) hours in any week or in excess of the hours required of an employee by reason of his regular duty chart if a week's measurement is not appropriate, whether of an emergency nature or of a non-emergency nature, shall be compensated for either by cash payment or compensatory time off, at the rate of time and

one-half, at the sole option of the employee. Such cash payments or compensatory time off shall be computed on the basis of fifteen (15) minute segments.

Section 2.

In order to preserve the intent and spirit of this Section on overtime compensation, there shall be no rescheduling of days off and/or tours of duty. This restriction shall apply both to the retrospective crediting of time off against hours already worked and to the anticipatory re-assignment of personnel to different days off and/or tours of duty.

Section 3.

Overtime shall be computed on a monthly basis and the Department shall make every reasonable effort to pay such overtime within six (6) weeks following the submission of the monthly report.

ARTICLE IV - RECALL AFTER TOUR

Any Correction Officer who is recalled to duty after having completed the employee's regular tour of duty shall receive pay pursuant to the regular overtime provisions of this Agreement, that is, in cash or compensatory time off at the sole option of the Correction Officer at the rate of time and one-half for the time actually worked. The Department will issue a directive to the heads of all commands informing them that a Correction Officer who is recalled shall be put to work.

The City of New York

OFFICE OF MUNICIPAL LABOR RELATIONS

110 CHURCH STREET, NEW YORK, N. Y. 10007

BRUCE McIVER
Director

HARRY KARETZKY
1st Deputy Director

ROBERT W. LINN
Deputy Director and General Counsel

JAMES HANLEY
2nd Deputy Director

TO: HEADS OF ALL AFFECTED CITY DEPARTMENTS AND AGENCIES

FROM: BRUCE McIVER, DIRECTOR OF MUNICIPAL LABOR RELATIONS

SUBJECT: EXECUTED CONTRACT: Housing Patrolmen

TERM: July 1, 1982 to June 30, 1984

Attached for your information and guidance, is a copy of the executed contract entered into by the Director of Municipal Labor Relations on behalf of the City of New York and Housing Authority Patrolmen's Benevolent Association on behalf of the incumbents of positions listed in Article I of said contract.

The contract incorporates the terms of an agreement reached through collective bargaining negotiations and related procedures.

DATED: August 1, 1983

OFFICE OF MUNICIPAL LABOR RELATIONS
REGISTRATION
ORIGINAL CONTRACT
NO: DATE:

BRUCE McIVER

Section 3.

An employee may consent in writing to the authorization of the deduction of dues from the employee's wages and to the designation of the Union as the recipient thereof. Such consent, if given, shall be in the proper form, in accord with Section 2 of this Article II, which bears the signature of the employee.

Section 4.

The New York City Housing Authority and the Union agree to an agency shop to the extent permitted by applicable law as described in a supplemental agreement hereby incorporated by reference into this Agreement.

ARTICLE III - HOURS AND OVERTIME

Section 1.

a. All ordered and/or authorized overtime in excess of forty (40) hours in any week or in excess of the hours required of an employee by reason of the employee's regular duty chart if a week's measurement is not appropriate, whether of an emergency nature or of a non-emergency nature, shall be compensated for either by cash payment or compensatory time off, at the rate of time and one-half, at the sole option of the employee. Such cash payments or compensatory time off shall be computed on the basis of completed fifteen (15) minute segments.

b. In order to preserve the intent and spirit of this Section on overtime compensation, there shall be no rescheduling of days off and/or tours of duty. Notwithstanding anything to

the contrary contained herein, tours rescheduled for court appearances shall be of the same length as the rescheduled tour of duty. This restriction shall apply both to the retrospective crediting of time off against hours already worked and to the anticipatory reassignment of personnel to different days off and/or tours of duty. Notwithstanding anything to the contrary contained herein, the Housing Authority shall not have the right to reschedule employees' tours of duty, except that on the following occasions the Housing Authority may reschedule employees' tours of duty by not more than three (3) hours before or after normal starting time for such tours, without payment of the pre-tour or post-tour overtime provided that the Housing Authority gives at least seven (7) days advance notice to the employee whose tours are to be so rescheduled: New Year's Eve, St. Patrick's Day, Thanksgiving Day, Puerto Rican Day, West Indies Day and Christopher Street Liberation Day.

Section 2.

Notwithstanding anything to the contrary herein, employees assigned to the Detective Bureau as so-called "white shield detectives" shall receive overtime compensation in accord with the arbitrator's award in O.C.B. Docket No. A-148-70, dated September 8, 1971, unless such compensation in cash is approved by the Borough Commander.

Section 3.

Overtime shall be computed on a monthly basis and shall be paid no later than six (6) weeks after submission of the monthly report.

The City of New York

OFFICE OF MUNICIPAL LABOR RELATIONS

110 CHURCH STREET, NEW YORK, N. Y. 10007

BRUCE McIVER
Director

HARRY KAMETZKY
1st Deputy Director

ROBERT W. LINN
Deputy Director and General Counsel

JAMES HARLEY
2nd Deputy Director

TO: HEADS OF ALL AFFECTED CITY DEPARTMENTS AND AGENCIES

FROM: BRUCE McIVER, DIRECTOR OF MUNICIPAL LABOR RELATIONS

SUBJECT: EXECUTED CONTRACT: Detectives

TERM: July 1, 1982 to June 30, 1984

Attached for your information and guidance, is a copy of the executed contract entered into by the Director of Municipal Labor Relations on behalf of the City of New York and Detectives Endowment Association on behalf of the incumbents of positions listed in Article I of said contract.

The contract incorporates the terms of an agreement reached through collective bargaining negotiations and related procedures.

DATED: August 1, 1983

OFFICE OF MUNICIPAL LABOR RELATIONS
REGISTRATION
OFFICIAL CONTRACT

NO: 84002

DATE: AUG 01 1983

BRUCE McIVER

dated May 15, 1969, entitled " Regulations Governing Procedures for Orderly Payroll Checkoff of Union Dues" and any executive orders which amend or supersede said Executive Orders.

Section 3.

An employee may consent in writing to the authorization of the deduction of dues from the employee's wages and to the designation of the Union as the recipient thereof. Such consent, if given, shall be in a proper form, in accord with Section 2 of this Article II, which bears the signature of the employee.

Section 4.

The parties agree to an agency shop to the extent permitted by applicable law, as described in a supplemental agreement hereby incorporated by reference into this Agreement.

ARTICLE III - HOURS AND OVERTIME

Section 1(a)

Ordered overtime of an emergency nature, authorized by the Police Commissioner or Chief of Operations, which had previously to October 1, 1968 been compensated for in cash at the rate of time and one-half shall be compensated for by cash payment or compensatory time off at the rate of time and one-half at the sole option of the employee. Such cash payments or compensatory time off shall be computed on the basis of completed fifteen (15) minute segments.

Section 1(b)

Effective July 1, 1976, an employee shall be compensated either by cash or compensatory time off, at the rate of time and one-half, at such employee's sole option, for hours worked by such employee in each calendar year of authorized overtime (other than ordered overtime of an emergency nature referred to in subsection (a) of this Section 1) in excess of 40 hours in any week or in excess of the hours required of an employee by reason of the employee's regular duty chart, if a week's measurement is not appropriate. No employee shall be compensated in cash for more than 100 hours in each calendar year pursuant to this subsection (other than ordered overtime of an emergency nature referred to in subsection (a) of this Section 1), unless such compensation in cash is approved by the Borough Commander. For all such authorized overtime beyond the cash compensated 100 hours in each calenda. year (other than ordered overtime or an emergency nature referred to in subsection (a) of this Section 1), an employee shall be compensated by compensatory time off at the rate of time and one-half subject to the limitations and other provisions of this subsection. The cash payments or compensatory time off provided in this subsection shall be computed on.the basis of completed fifteen (15) minute segments.

Section 1(c)

In order to preserve the intent and spirit of this section on overtime compensation, there shall be no rescheduling of days off, except that for the purpose of night watch coverage an employee's swing period shall not be diminished by more than 8 hours. This restriction shall apply both to the retrospective crediting of time off against hours already worked and to the anticipatory reassignment of personnel to different days off. Prior to the completion of the steps in the grievance procedure under Article XXI of this Agreement, the President of the D.E.A. may informally discuss a question in regard to the application of this Section 1(c) with the Police Commissioner and the Chairman of the Personnel Grievance Board in an effort to resolve the matter.

Section 1(d)

An employee who is specially assigned to duty involving travel outside New York City shall receive credit for eight (8) hours' work for each day of that assignment at the employee's straight time rate of pay. On days which are not the employee's regularly scheduled days, such credit shall be at the rate of time and one-half, subject to the limitations of subsection (b) of this Section 1. When such employee performs duty in excess of 8 hours and such duty can be verified to the satisfaction of the employee's Commanding Officer, the Commanding Officer shall recommend to the Chief of Operations that the employee be credited with appropriate overtime compensation.

Section 2.

Overtime shall be computed on a monthly basis and shall be paid no later than six (6) weeks after submission of the monthly report.

ARTICLE IV - RECALL AFTER TOUR

Section 1.

Any employee who is recalled to duty after having completed the employee's regular tour of duty but four (4) hours or more before the commencement of the employee's next regular tour and who is released without having been assigned to duty prior to the commencement of said next regular tour shall receive a minimum of four hours pay pursuant to the regular overtime provisions of this Agreement.

Section 2.

Any employee who is recalled to duty after having completed the employee's regular tour of duty but six (6) hours or more before the commencement of the employee's next regular tour and who is assigned to duty and then released from duty prior to commencement of said next regular tour shall receive a minimum of six hours pay pursuant to the regular overtime provisions of this Agreement.

Section 3.

In the event the actual time spent on recall defined in Sections 1 and 2 of this Article extends beyond the minimum

Section II. Text of Citywide Agreement July 1, 1980 - June 30, 1982

COLLECTIVE BARGAINING AGREEMENT entered into this 17th day of June 1982, by and between the City of New York and related public employers pursuant to and limited to their respective elections or statutory requirement to be covered by the New York City Collective Bargaining Law ("NYCCBL") and their respective authorizations to the City to bargain on their behalf and the New York City Health and Hospitals Corporation (hereinafter referred to jointly as the "Employer"), and District Council 37, A.F.S.C.M.E., AFL-CIO (the "Union"), for the period from July 1, 1980 to June 30, 1982.

WITNESSETH:

WHEREAS, the parties hereto have entered into collective bargaining and desire to reduce the results thereof to writing,

NOW THEREFORE, it is mutually agreed as follows:

ARTICLE I—UNION RECOGNITION ON CITYWIDE MATTERS

Section 1.
The Employer recognizes the Union as the sole and exclusive collective bargaining representative on citywide matters which must be uniform for the following employees:

a. Mayoral agency employees subject to the Career and Salary Plan.

b. Employees of the Health and Hospitals Corporation with the exception of Group 11 employees and interns and residents.

c. Employees of the Off-Track Betting Corporation, and the New York City Housing Authority pursuant and limited to the extent of their respective elections to be covered by the NYCCBL.

d. Employees of the Comptroller, the District Attorneys, the Borough Presidents, and Public Administrators, who are subject to the Career and Salary Plan, pursuant and limited to the terms of their respective elections to be covered by the NYCCBL, and any museum, library, zoological garden or similar cultural institution for employees whose salary is paid in whole from the City Treasury, pursuant and limited to the election of said cultural institution to be covered by this Agreement.

Section 2. Exclusions

a. Prevailing rate employees are excluded from the coverage of this Agreement.

b. Managerial, confidential, exempt civil service employees, and other employees ineligible for collective bargaining, are excluded from the coverage of this Agreement.

Section 3.
The Employer recognizes the Union as the sole and exclusive collective bargaining representative for employees included in the New York City Employees Retirement System on pension matters which must be uniform for all such employees pursuant to Section 1173-4.3(a)(5) of the NYCCBL.

Section 4.
For the purposes of this Agreement, the term "employee" shall mean a full-time per annum worker, unless otherwise specifically indicated herein.

Section 5.
Effective July 1, 1981, and each July 1 thereafter, a per diem employee who has worked the appropriate number of hours in the normal week for the equivalent per annum title as listed in Appendix A, but in no case less than 35 hours per week, for at least two continuous years immediately preceding that July 1 and who continues to meet the above-stated conditions shall be deemed to be an employee under Section 4 above except that the following sections of the Agreement shall not be applicable: Article V, Sections 8, 17b, 17c, 17d, 18, and 19; Article VI, Section 9; Article VII, Sections 1,2,3,5, and 6; Article X; and Article XVI. The Leave Regulations shall be amended in accordance with these modifications. Seniority for eligibility for benefits under this Agreement shall be computed from the date two years prior to the date such employee becomes covered by this Section. Any separation of more than two weeks shall constitute a break in service for the purpose of determining continuity of service under this Section.

ARTICLE II—WORK WEEK

Section 1.
The normal work week for employees in each of the titles covered by this Agreement shall be listed in the attached Appendix A. If a title covered by this Agreement is inadvertently omitted from the attached list, the number of hours in the normal work week for employees in such title shall be determined by the parties in accordance with the number of hours being worked by a majority of employees in the affected title and added to Appendix A. The hours in the normal work week for employees in any newly established title which is created during the term of this Agreement and is covered by this Agreement shall be determined by the Employer and added to Appendix A.

Section 2.
Wherever practicable, the normal work week shall consist of five (5) consecutive working days separated by two (2) consecutive days off. This shall not, however, constitute a bar to the investigation and implementation by the Employer with the Union's participation and consent of flexible work weeks, flexible work days or other alternative work schedule(s).

ARTICLE III—SHIFT DIFFERENTIAL AND HOLIDAY PREMIUM

This Article is applicable to all employees except those in classes of positions certified by the Board of Certification in Decision No. 50-73 and subsequent amendments to said certification.

Section 1.

a. There shall be a shift differential of ten percent (10%) for all employees covered by this Agreement for all scheduled hours worked between 6 P.M. and 8 A.M. with more than one hour of work between 6 P.M. and 8 A.M.

b. An employee working overtime shall not receive a shift differential for such work, but shall receive overtime pay or compensatory time as provided for in Article IV.

Section 2.

a. If an employee is required to work on any of the eleven (11) holidays listed in Section 9 of Article V, the employee shall receive a fifty percent (50%) cash premium for all hours worked on the holiday and shall, in addition, receive compensatory time off at the employee's regular rate of pay. Compensatory time off earned pursuant to this Section may be scheduled by the agency either prior to or after the day on which the holiday falls.

b. If the holiday designated pursuant to this Agreement falls on a Saturday or a Sunday, the fifty percent (50%) cash premium and compensatory time off at the employee's regular rate of pay shall be paid to all employees who work on the actual holiday only. Employees required to work on the Friday or Monday day of observance designated pursuant to Article V, Section 9 shall receive compensatory time only. With respect to an employee who is scheduled to work on both the Saturday or Sunday holiday and the day designated for observance: (1) if the employee is required to work on one of such days, the employee shall be deemed to have received compensatory time off (and the employee shall receive the fifty percent (50%) cash premium when required to work on the actual holiday); or (2) if the employee is required to work on both such days, the employee shall receive the fifty percent (50%) cash premium and compensatory time off at the employee's regular rate of pay for all hours worked on the actual holiday.

c. However, if the employee is required to work on a holiday which falls on the employee's scheduled day off, the employee may choose whether such holiday work is to be compensated by the fifty percent (50%) cash premium and compensatory time off provided for above, or if the employee is otherwise eligible, by the overtime provisions of Article IV. An employee shall not receive for the same hours of work both (1) overtime pay and (2) the fifty percent (50%) cash premium and compensatory time off. However, regardless of whether the holiday falls on a regular working day or on a scheduled day off, if the number of hours worked on such holiday exceeds the employee's normal daily tour of duty, all hours of work in excess of such normal daily tour of duty shall be covered by the provisions of Article IV.

d. Shifts which begin at 11 P.M. or later on the day before the holiday shall be deemed to have been worked entirely on the holiday, and shifts which begin at 11 P.M. or later on the holiday shall be deemed not to have been worked on the holiday.

Section 3.

a. An employee may receive both a shift differential and holiday premium pay for the same hours of work, but in such cases each shall be computed separately according to paragraph b. of this Section.

b. Shift differentials and holiday premium pay shall in all cases be computed on the individual employee's hourly rate of pay as determined in Section 6 of Article IV.

Section 4.

Part-time per annum, hourly, per diem, per session and seasonal employees shall be covered by the terms of this Article.

ARTICLE IV—OVERTIME

Section 1.

a. "Authorized voluntary overtime" and "authorized voluntary standby time" shall be defined as overtime or standby time for work authorized by the agency head or the agency head's designee, which the employee is free to accept or decline.

b. "Ordered involuntary overtime" and "ordered involuntary standby time" shall be defined as overtime or standby time which the employee is directed in writing to work and which the employee is therefore required to work. Such overtime or standby time may only be authorized by the agency head or a representative of the agency head who is delegated such authority in writing.

Section 2.

a. Ordered involuntary overtime which results in an employee working in excess of forty (40) hours in any calendar week shall be compensated in cash at time and one half (1 1/2 times).

b. For those employees whose normal work week is less than forty (40) hours, any such ordered involuntary overtime worked between the maximum of that work week and forty (40) hours in any calendar week, shall be compensated in cash at straight time (1 time). For employees granted a shortened work day under Section 18 of Article V, compensatory time for work performed between thirty (30) and thirty-five (35) hours a week when such shortened schedule is in effect shall be granted at the rate of straight time (1 time), but such work shall not be considered overtime.

c. Upon the written approval of an employee's request by the agency head or designee, an employee who works ordered involuntary overtime shall have the option of being compensated in time off at the applicable rates provided in Sections 2(a) and 2(b). * CHECK

d. There shall be no rescheduling of days off and/or tours of duty to avoid the payment of overtime compensation. Any work performed on a scheduled day off shall be covered by this Article.

e. Employees who are paid in cash or who are compensated for overtime pursuant to subsection c of this Section may not credit such time for meal allowance.

Section 3.

Authorized voluntary overtime which results in any employee working in excess of the employee's normal work week in any calendar week shall be compensated in time off at the rate of straight time.

Section 4.
No credit shall be recorded for unauthorized overtime. Credit for all authorized overtime beyond the normal work week shall accrue only after one (1) hour in units of one-quarter (1/4) hour to the nearest one-quarter (1/4) hour.

Section 5.
Time during which an employee is in full pay status, whether or not such time is actually worked, shall be counted in computing the number of hours worked during the week.

Section 6.
The hourly rate of pay shall be determined by taking the below indicated fractional part of the affected employee's annual regular salary:

a. For employees whose basic work week is thirty-five (35) hours:

$$\frac{1}{261 \times 7} \quad \text{or} \quad \frac{1}{1827}$$

b. For employees whose basic work week is thirty-seven and one-half (37 1/2) hours:

$$\frac{1}{261 \times 7\ 1/2} \quad \text{or} \quad \frac{1}{1967.5}$$

c. For employees whose basic work week is forty (40) hours:

$$\frac{1}{261 \times 8} \quad \text{or} \quad \frac{1}{2088}$$

Payment shall be computed and paid on a basis of quarter hour units actually worked beyond the normal scheduled work week, provided at least one (1) full hour is compensable in a calendar week. "Annual regular salary" shall include educational, assignment, and longevity differential, if any.

Section 7.
a. These overtime provisions, including recall and standby provisions, shall apply to all covered per annum employees including those working more than half-time, and with permanent, provisional or temporary status, whose annual gross salary including overtime, all differentials and premium pay is not in excess of the amount set forth in subsection c below for eligibility for cash compensated overtime (the "cap").

b. When an employee's annual gross salary including overtime, all differentials and premium pay is higher than the cap, compensatory time at the rate of straight time shall be credited for authorized overtime. The gross salary shall be computed on an annual calendar year basis and for the purposes of this Section shall mean basic annual salary plus any monies earned.

c. Employees whose annual gross salary including overtime, all differentials and premium pay is in excess of the cap shall be required to submit periodic time reports at intervals of not less than one week, but shall not be required to follow daily time clock or sign-in procedures. The periodic time report shall be in such form as is required by the Agency.

d. (1) Effective July 1, 1980, the cap shall be $25,920.

(2) Effective July 1, 1981, the cap shall be $27,994 (the minimum salary rate of Level I of the Pay Plan for Managerial Employees plus the average amount of general salary adjustments authorized for such employees).

(3) Thereafter the cap shall be adjusted by the average amount of the general salary adjustments authorized for employees in the Pay Plan for Managerial Employees. However, in no case shall the cap be less than the minimum salary rate of Level 1 of the Pay Plan for Managerial Employees. Each time the cap is adjusted, an interpretive memorandum or similar document shall be issued setting forth the new amount.

Section 8.
a. Employees who work authorized overtime, except authorized overtime compensated for in cash or pursuant to Section 2c of this Article, shall be entitled to the following meal allowances:

	Effective 7/1/80	Effective 7/1/81
1. For two continuous hours of overtime	$5.50	$6.00
2. For five continuous hours of overtime	8.00	8.50
3. For seven continuous hours of overtime	8.00	8.50
4. For ten continuous hours of overtime	9.00	9.50
5. For fifteen continuous hours of overtime	10.00	10.50

b. Time off for meals shall not be computed as overtime. However, such time off shall not affect the continuity requirement for the above meal allowances.

Section 9.
Employees recalled from home for authorized ordered involuntary overtime work, shall be guaranteed overtime payment in cash for at least four (4) hours, if eligible for cash payment under Section 7 of this Article. When an employee voluntarily responds to a request to come from home for voluntary authorized overtime work, such overtime shall be compensated in time off on an hour for hour basis but with minimum compensatory time of four (4) hours.

Section 10.
Compensatory time off for voluntary overtime work as authorized in this Article shall be scheduled at the discretion of the agency head but the agency head shall not schedule its use without the consent of the employee within the thirty (30) calendar days following its earning. However, all compensatory time off must be taken by the affected employee within the three (3) months following its earning. Any such time not so used by the employee's choice shall be added to the employee's sick leave balance. If the agency head calls upon an employee not to take the compensatory time off or any part thereof within the three (3) months, that portion shall be carried over until such time as it can be liquidated.

Section 11.
a. Employees who volunteer to stand by in their homes, as authorized by competent authority, shall receive compensatory time credit on the basis of one-half (1/2) hour for each hour of standby time.
b. Employees who are required, ordered and/or scheduled on an involuntary basis to stand by in their homes subject to recall, as authorized by the agency head or the agency head's designated representative shall receive overtime payment in cash for such time on the basis of one-half (1/2) hour paid overtime for each hour of standby time. Employees who reside on the work premises or are in post-graduate training status shall not be included in this provision.
c. Employees who are required to carry communication devices (or "beepers") shall not be restricted in their ability to travel. Notwithstanding the above, they may be required to call in or may make other mutually agreeable accommodations with the agency.

Section 12.
a. In emergency situations, the Employer shall have a right, after negotiation with the Union, to apply a variation of the overtime provisions of this Agreement.
b. The Employer and the Union may agree to apply a variation of the overtime provisions of this Agreement.

Section 13.
Except in an emergency situation, when authorized and ordered by an agency head, a Hospital Executive Director or a designated representative, no employee shall be required to actually work more than two (2) consecutive normal work shifts in any twenty-four (24) hour period nor shall said employee be required to work more than two (2) consecutive work shifts for more than two (2) consecutive weeks.

Section 14.
In the event of any inconsistency between this Article and standards imposed by Federal or State Law, the Federal or State Law shall take precedence unless such Federal or State Law authorizes such inconsistency.

ARTICLE V – TIME AND LEAVE

Section 1.
All provisions of the Resolution approved by the Board of Estimate on June 5, 1956 on "Leave Regulations for Employees who Are Under the Career and Salary Plan" and amendments, and official interpretations relating thereto, in effect on the effective date of this Agreement and amendments which may be required to reflect the provisions of this Agreement shall apply to all employees covered by the Agreement.
Interpretations shall be defined as those rulings issued by the City Personnel Director pursuant to Section 6.6 of the Leave Regulations and which are printed in the Official Leave Regulations.
This Section shall not circumscribe the authority of the City Personnel Director to issue new interpretations subsequent to the effective date of this Agreement. Such new interpretations shall be subject to the grievance and arbitration provisions of this Agreement.

Section 2.
a. Effective January 1, 1979, employee requests for annual leave made pursuant to agency policy or collective bargaining agreement, shall be in writing on a form supplied by the agency. Approval or disapproval of the request shall be made on the same form by a supervisor authorized to do so by the agency.
Decisions on requests for annual leave or for leave with pay shall be made within seven (7) working days of submission except for requests which cannot be approved at the local level or requests for leave during the summer peak vacation period or other such periods for which the Employer has established and promulgated a schedule for submission and decision of leave requests. Once a leave request has been approved, the approval may not be rescinded except in writing by the agency head, Executive Director of a Hospital or Chief of Personnel in the Police Department.
If any agency head, Executive Director of a Hospital or Chief of Personnel in the Police Department calls upon an employee to forego the employee's requested annual leave or any part thereof in any year, it must be in writing and that portion shall be carried over until such time as it can be liquidated.
b. Where an employee has an entitlement to accrued annual leave and/or compensatory time, and the City's fiscal condition requires employees who are terminated, laid off or who choose to retire in lieu of layoff, be removed from the payroll on or before a specific date, or where an employee cannot be considered for an extension of service past the mandatory retirement age because of budgetary considerations, the Employer shall provide the monetary value of accumulated and unused annual leave and/or compensatory time allowances standing to the employee's credit in a lump sum. Such payments shall be in accordance with the provisions of Executive Order 30, dated June 24, 1978.

Section 3.
Approved sick leave and annual leave may be used in units of one (1) hour. Any employee who has completed four (4) months of service may be permitted to take approved annual leave as it accrues. Approved sick leave may be used as it accrues. This Section shall not alter the provisions of any existing unit agreement which contains a more beneficial procedure.

THE CITY OF NEW YORK
OFFICE OF MUNICIPAL LABOR RELATIONS
250 BROADWAY
NEW YORK, N.Y. 10007

BRUCE McIVER
DIRECTOR

TO: HEADS OF ALL AFFECTED CITY DEPARTMENTS AND AGENCIES

FROM: BRUCE McIVER, DIRECTOR OF MUNICIPAL LABOR RELATIONS

SUBJECT: EXECUTED CONTRACT: Patrolmen

TERM: July 1, 1982 to June 30, 1984

Attached for your information and guidance, is a copy of the executed contract entered into by the Director of Municipal Labor Relations on behalf of the City of New York and the Patrolmen's Benevolent Association on behalf of the incumbents of positions listed in Article I of said contract.

The contract incorporates the terms of an agreement reached through collective bargaining negotiations and related procedures.

DATED: May 6, 1983

BRUCE McIVER

OFFICE OF MUNICIPAL LABOR RELATIONS
REGISTRATION
OFFICIAL CONTRACT

NO: 83008

DATE: MAY 06 1983

Dues" and in accord with the Mayor's Executive Order No. 99, dated May 15, 1969, entitled "Regulations Governing Procedures for Orderly Payroll Checkoff of Union Dues" and any executive orders which amend or supersede said Executive Orders.

Section 3.

An employee may consent in writing to the authorization of the deduction of dues from the employee's wages and to the designation of the Union as the recipient thereof. Such consent, if given, shall be in a proper form, in accord with Section 2. of this Article II, which bears the signature of the employee.

Section 4.

The parties agree to an agency shop to the extent permitted by applicable law as described in a supplemental agreement hereby incorporated by reference.

ARTICLE III - HOURS AND OVERTIME

Section 1.

a. All ordered and/or authorized overtime in excess of the hours required of an employee by reason of the employee's regular duty chart, whether of an emergency nature or of a non-emergency nature, shall be compensated for either by cash payment or compensatory time off, at the rate of time and one-half, at the sole option of the employee. Such cash payments or compensatory time off shall be computed on the basis of completed fifteen (15) minute segments.

b. In order to preserve the intent and spirit of this Section on overtime compensation, there shall be no rescheduling of days off and/or tours of duty. Notwithstanding anything to the contrary contained herein, tours rescheduled for court appearances may begin at 8:00 A.M. and shall continue for eight (8) hours thirty-five (35) minutes. This restriction shall apply both to the retrospective crediting of time off against hours already worked and to the anticipatory reassignment of personnel to different days off and/or tours of duty. In interpreting this Section, T.O.P. 336, promulgated on October 13, 1969, shall be applicable. Notwithstanding anything to the contrary contained herein, the Department shall not have the right to reschedule employees' tours of duty, except that on the following occasions the Department may reschedule an employee's tours of duty by not more than three hours before or after normal starting for such tours, without payment of pre-tour or post-tour overtime provided that the Department gives at least seven days' advance notice to the employee whose tours are to be so rescheduled: New Year's Eve, St. Patrick's Day, Thanksgiving Day, Puerto Rican Day, West Indies Day, and Christopher Street Liberation Day.

Section 2.

Notwithstanding anything to the contrary herein, employees assigned to the Detective Bureau as so-called "white shield detectives" shall receive overtime compensation in accord with the arbitrator's award in O.C.B. Docket No. A-148-70, dated

September 8, 1971, unless such compensation in cash is approved by the Borough Commander.

Section 3.

Overtime shall be computed on a monthly basis and shall be paid no later than six (6) weeks after submission of the monthly report.

ARTICLE IV - RECALL AFTER TOUR

Section 1.

Any employee who is recalled to duty after having completed the employee's regular tour of duty but four (4) hours or more before the commencement of the employee's next regular tour and who is released without having been assigned to duty prior to the commencement of said next regular tour shall receive a minimum of four hours' pay pursuant to the regular overtime provisions of this Agreement, that is, in cash or compensatory time off at the sole option of the employee at the rate of time and one-half (i.e., the equivalent of six hours compensation at the employee's straight time rate).

Section 2.

Any employee who is recalled to duty after having completed the employee's regular tour of duty but six (6) hours or more before the commencement of the employee's regular tour and who is assigned to duty and then released from duty prior to

Mr. MURPHY. Mr. Hawkins.

Mr. HAWKINS. Let me first join in the welcome to Mayor Koch. We certainly appreciate your testifying before the committee. You made a comparison of your role in the Congress a few years ago with your position as mayor of a big city such as New York. However, may I inform you that things here have changed also, and we too understand the cost of programs before we act on them, now we get an estimate of the cost which must be attached to every proposal.

Things have also changed, because we now have a budget process and we engage mostly in reducing costs, not in increasing them. So, if you think that you are in heaven, perhaps we are in heaven also. I don't know about being mayor of a city. However, I have seen you dancing on the stage with the young starlets, and you are doing well, too.

Mr. KOCH. Thank you, Mr. Chairman.

Mr. HAWKINS. I certainly want to congratulate you on the job you are doing.

Mr. KOCH. Thank you, Mr. Chairman.

Mr. HAWKINS. The mayor of the city of Los Angeles had indicated to me the other day that you had agreed to testify, so I assume you have expressed what would probably be his basic concern as well as your own.

Mr. KOCH. Yes, sir.

Mr. HAWKINS. As you well know, there are individuals who would undermine the Fair Labor Standards Act, and unfortunately, that is what we hear is being attempted.

The Fair Labor Standards Amendments of 1974 have been characterized as an intrusion into local government affairs. The act is based on the commerce clause of the Constitution which gives the Congress the power to regulate activities between the States. There are many of us who feel this is one of the great acts that was passed by the Congress prior to our time, and your time as well.

So we have the protection of the Fair Labor Standards Act to keep in mind. There are individuals who, once we open up the act, will attempt to amend it in other ways, not in the ways that you have suggested, but in ways that would undermine the act's basic protection.

I derive from what you have said that that is not your intent, your intent is not to undermine the Fair Labor Standards Act?

Mr. KOCH. Yes.

Mr. HAWKINS. Thank you for that clarification. May I ask you whether or not, since the *Garcia* decision, there have been any efforts on the part of the National League of Cities and U.S. Conference of Mayors to attempt to discuss this problem with the representatives of organized labor or those with whom you have contracts, in order that there might be some flexibility in implementation of the *Garcia* decision, without at the same time undermining the Fair Labor Standards Act, which many of us would hesitate to do.

In other words, have you made any gesture toward getting an agreement or some accommodation from the representative of these national bodies that would relieve the financial situation yet preserve the protections of the wage earners.

Mr. KOCH. Two things. One, I am told by Frank Milberg, who is our general counsel, that the U.S. Conference of Mayors and National League of Cities representatives, and I am not one of the senior officials there, they are negotiating I think today.

Mr. MILBERG. Yes, sir.

Mr. KOCH. They began their discussion today with leaders of organized labor. That obviously is a fruitful path to pursue. I also believe, Mr. Chairman, that labor is not necessarily for this congressional approach, that there are unions who agree with the position that I take, and indeed, the position that I take was hammered out in collective bargaining agreements.

I mean, I don't think there is anybody in America that believes that as it relates to cities, that unions don't do well at the collective bargaining table arrangements.

Obviously, they are always going to say they didn't get enough, and we are always going to say we paid too much, generally speaking, it comes out fair, and otherwise, it wouldn't have been settled, that is what happens.

What you are going to be doing here, if you don't do what I think, what ought to be done to relieve the situation is, you are going to give one side that has already established its position, extra added strengthening, against the government that represents them and everybody else who lives in the city.

You are intruding into the collective bargaining process. I think it is unfair. I think we have hammered out these agreements with the consent of——

Mr. MURPHY. I know you are speaking for New York, but I know as a Congressman, you were very well aware that many States have prohibitions or have severe restrictions on public employees negotiating collectively.

So, when we talk about fair labor standards, we can't gear our national act for New York City.

Mr. KOCH. That is——

Mr. MURPHY. You helped craft it.

Mr. KOCH. Let me say this: You can dispose of that very quickly, and just simply say where there is such prohibition, you will apply your standard.

Mr. MURPHY. Except New York?

Mr. KOCH. No, no; how about L.A.? How about all of these cities that have asked me to represent them. There are many here.

Mr. MURPHY. The bottom line as I understand.

Mr. KOCH. This is not a New York issue.

Mr. MURPHY. I guess the bottom line—what I would like to know—that you are requesting that the law be amended to exempt all units of the local or State government?

Mr. KOCH. Yes.

Mr. MURPHY. From the Fair Labor Standards Act, in regards to overtime only, no other exemptions or changes, is that correct?

Mr. KOCH. That is correct.

Mr. MURPHY. And you are seeking a total exemption with no guidelines?

Mr. KOCH. That is correct.

Mr. MURPHY. Thank you.

Mr. Petri.

Mr. PETRI. Thank you, Mr. Chairman.

Mr. HAWKINS. Could I interpose?

I want to make my point. My understanding is that our witness is operating under a restraint of time; we appreciate the fact that he is representing not only himself but Mayor Bradley and the other mayors, and we promised that we would try to accommodate his time. Since he must be out of here not much after 2 o'clock, I would suggest that we try to limit our questions, if we possibly can, to accommodate our witness.

Mr. KOCH. I will try to be brief in my responses.

Mr. PETRI. I have two brief questions, unless there is a followup.

First of all, you have been just through another very successful campaign. Congratulations.

Mr. KOCH. Thank you.

Mr. PETRI. I think you got something like 75 percent of the vote?

Mr. KOCH. No; it was only 64 in a six-way race.

Mr. PETRI. Anyway, you must clearly have been doing something right and have a feeling for the current sentiment of the people in New York?

Mr. KOCH. Let me say everybody in this room didn't vote for me.

Mr. PETRI. But the thing that has come home to me in your testimony, you said there is no point in fixing something if it is not broken.

Mr. KOCH. Correct.

Mr. PETRI. I don't recall—I have been here 6 years now—a great hue and cry on this issue, although there may have been legislation introduced to bring various State and local employees under the Fair Labor Standards Act. I did not receive letters from my local employees asking this and so on, but now we have a Supreme Court decision. Was there any comment at all about this during your campaign?

Mr. KOCH. Not once—and there were a number of people who were running who would be considered on the radical left as well as center—not once was this issue raised by anyone either running or interrogating the candidates.

Mr. PETRI. Have you discussed this at all with local employee representatives?

Mr. KOCH. They have not asked me to meet on that but Bob Linn might have some.

Mr. PETRI. I am curious to know if their feeling is this will cause more trouble or——

Mr. LINN. I think we deal with some 70 different bargaining units representing 5,000 different titles. Some of the unions are very happy with the set of status that we now have. They bargain them and that is the relationship that was built in the framework of nonapplication of the Fair Labor Standards Act. There are other unions that feel this is an opportunity to get some additional benefits they have not been able to negotiate. So I would say it is a mixed reaction that we get from the different units.

Mr. PETRI. Thank you.

One other question on procedure. There is some thought here on the part of people in the legislative process, that it might make sense for us to sit down and pass something in the next week or two, to delay the imposition of this ruling a bit further, for an addi-

tional 6 months, so we would have hearings and sort it out and see if there is some area that should definitely be exempt and other areas this would be helpful to apply. Would you have any reaction to that?

Mr. KOCH. My reaction would be if you can get a majority to pass legislation which would implement that which I have suggested, do it as quickly as you can. If you don't have that majority, then seek a period to put it over, within which you can get that majority.

Mr. PETRI. You would not like us to just see the decision go into effect and then try to straighten things out?

Mr. KOCH. No, that would be the worst of all worlds.

Mr. MURPHY. Mr. Bartlett.

Mr. BARTLETT. Thank you, Mayor, for your excellent testimony.

A couple of comments which you may wish to respond to and then several questions on your testimony.

It seems to me to be absolutely essential that we not let this become what it is not, that it is not a union versus management issue or an employer versus employee issue, whether a city or State has a collective-bargaining agreement, or as many do not have collective bargaining, nevertheless there are paramount rights of employees at stake here, as well as rights of taxpayers and services rendered.

I think what you are asking is that Congress simply make a series of rational decisions on what our legislative intent is vis-a-vis volunteer personnel vis-a-vis comp time in lieu of overtime and other series of specific decisions. Is that correct?

Mr. KOCH. That is exactly correct.

Mr. BARTLETT. That was the right answer, Mayor.

And second, in relating to I think the testimony you gave in answer to the question from Chairman Murphy, and other things, in trying to define volunteer personnel, the city of New York defines volunteer personnel in one set of circumstances, while other cities provide their volunteers in other sets of circumstances. I think that what Congress' purpose ought to be and what the legislation ought to do is to just simply be explicit, so that Congress defines volunteer personnel and if we intend to exempt volunteers from the Fair Labor Standards Act, which I believe we do, we not leave it up to a future court decision or a sort of guessing game as to what constitutes a volunteer and what doesn't.

Mr. KOCH. I agree.

Mr. BARTLETT. That is what you are asking for. Now, a couple of questions. First, could you describe what changes are going to occur in New York in terms of your employees' rights, if October 15 comes and goes with no congressional action? Will your uniformed officers, for example, have to change the way they work? Will there be reduction of services or an increase in taxes?

Mr. LINN. First, on the uniformed force. We then will have to pay what is now clearly a volunteer rate to take compensatory time that will cost some $16 to $18 million. We will give you the exact numbers, how we derive them, as soon as we can.

Mr. BARTLETT. That only affects the people who are today voluntarily choosing comp time?

Mr. LINN. That is right. The effect of that extra cost on the budget is one that the mayor has spoken about. On the civilian

side, we have two areas where it is going to directly impact on our civilian employees. First, in terms of overtime over 40 hours. Where it is voluntary overtime, we pay straight time, compensatory time at this point. Clearly that would not be allowed under the application of the law.

In addition, because of the pension costs that we have, in derivation of the final pension based on your final year of salary, we provide that there is a certain maximum that you can earn cash overtime up to—in the city it is $35,809 is your total compensation of wages plus overtime. Beyond that, we pay overtime in straight time compensatory time and those are, that is a provision we have worked with the union on and that is our framework of discussions.

If the law changes, we would have to pay cash time and a half, and it will tremendously impact on our current budget for the number of hours that have to be paid at that level, and in addition, will increase the pensions of these employees for the rest of their lives. Because time that is now paid is compensatory time will now become part of their pension base and will impact for the rest of their lives.

Mr. BARTLETT. Will there be layoffs in New York or other cities that you know of?

Mr. KOCH. I don't want to postulate layoffs, Mr. Chairman, because that is always a scare word. I don't want to employ it here.

Mr. BARTLETT. One last question, and that is on behalf of the National League of Cities and the other local governments that you represent, not just necessarily New York City. I just want to clarify that your organizations are not necessarily tied to only one solution to this.

There are 12 different bills introduced in the House, a number of others in the Senate, and will you sit down——

Mr. KOCH. We use those names simply because they seem to carry out the positions that we are in accord with.

But we won't rule out supporting other legislation, your own as well, after we have looked at it in detail.

Mr. BARTLETT. But in a sense you want to sit down with the interested parties and try to resolve this through concensus, like this, because the goal is to get something out of committee, and to get it on the floor for a vote.

I think that the parties really need to sit down to reach some reasonable set of guidelines and expectations, and frankly, I don't see the parties to be all that far apart.

Mr. KOCH. We are happy to do that. Thank you.

Mr. BARTLETT. I might advise you, Mayor, under section 7 of the act, you have a leeway up to 171 hours for an 8-day period to take care of comp time.

At the present time, you are only using 35 hours as your basis, or 140 hours for that period of time if you take four times.

So, if you take four times, so you got 31 hours—you can negotiate, and you can take comp time, and I hope that doesn't enter into your $40 million calculation or it will be in error.

Mr. LINN. Our calculation does not look at the 39 to 40. It looks only beyond 40, and I believe we take care of that issue.

Mr. KOCH. We will check it out, and make sure we are not double counting. One thing the city of New York will not do, we will not double count.

Mr. MURPHY. Thank you very, very much. Have a safe trip home and a pleasant day tomorrow.

[The prepared statement of Mayor Edward I. Koch is as follows:]

PREPARED STATEMENT OF EDWARD I. KOCH, MAYOR, NEW YORK, NY, ON BEHALF OF THE NATIONAL LEAGUE OF CITIES AND THE U.S. CONFERENCE OF MAYORS

Mr. Chairman and members of the Subcommittee, I am Edward Koch, Mayor of New York City. I am here today to testify on behalf of the National League of Cities and the U.S. Conference of Mayors regarding the problems facing cities as a result of the recent Supreme Court ruling extending the Fair Labor Standards Act (FLSA) to cities and to urge immediate Congressional action.

INTRODUCTION

Today I am going to discuss the wide range of FLSA-related problems facing cities throughout the nation. I am appearing on behalf of NLC which represents 15,000 cities through direct membership and membership in NLC's affiliated state municipal leagues and the Conference which represents the mayors of our principal cities -- those with populations of more than 30,000. I can state unequivocally that all members of NLC and the Conference are adversely affected in one way or another by the FLSA. The major problems facing cities include:

- Retroactive application of the FLSA
- Interference with collective bargaining agreements and other long-standing employment practices
- Effective preclusion of "comp time"
- Restrictions on special detail assignments for public safety employees
- Prohibition of dual employment arrangements

- Calculation of the regular rate
- Restrictions on the maximum number of regular work hours for public safety employees and overly broad definition of compensable time for public safety employees
- Restrictions on the use of volunteers
- Application of the exemption for professional, executive, and administrative employees to municipalities

The magnitude of these problems in particular cities may vary depending upon the city's labor practices and the community's needs and problems. For example, in New York City, the effective prohibition of comp time, the calculation of the regular rate, interference with collective bargaining, and the hours restrictions are causing major problems. In other cities, however, the restrictions on the maximum number of regular work hours or, especially in the case of rural communities, the restrictions on the use of volunteers may be the biggest problem. Because of the variety of problems caused by the FLSA, we believe that Congress should provide the broadest relief possible.

The likely effect of requiring states and localities to comply with the FLSA will be reductions in public services, tax increases, and lay offs of state and local employees. Immediate Congressional action to mitigate the impact of the Supreme Court's February 19, 1985 decision in Garcia v. San Antonio Metropolitan Transit Authority to extend the FLSA to all state and local employees is imperative. The Garcia decision, in

overruling National League of Cities v. Usery, relied to a large extent on the fact "that the national political process systematically protects States from the risk of having their functions . . . handicapped by Commerce Clause regulation." Thus, we are here today to let you know that the ability of states and cities to govern has been severely handicapped by the FLSA and to ask Congress to provide a remedy.

Despite the Department of Labor's (DOL) broad discretionary authority, the precedent of the initiatives taken by the Presidential Task Force on Regulatory Relief, and the legislative history of the FLSA, we do not expect meaningful reform of the existing FLSA regulations by DOL. Thus, it is up to Congress to develop a legislative solution to the Garcia problem. We believe that a solution which would protect the interests of cities without adversely affecting the interests of employees can be readily developed and are here today to assist in that process.

It is becoming increasingly clear, particularly in light of DOL's failure to establish regulations which recognize the problems of running a city, that Congress must amend the FLSA to minimize interference with the day-to-day operation of state and local government. The original purpose for the enactment of the FLSA in the 1930's was to create more jobs by penalizing

employers who required their employees to work long hours, thereby encouraging the hiring of additional employees. The way in which the FLSA is being applied to states and localities by the courts and DOL is expected to have the opposite effect: The number of jobs in the public sector is likely to decrease.

For cities, the overtime provisions of the FLSA are the primary area of concern. The minimum wage provisions of the FLSA are a problem only to the extent that they affect volunteers who are reimbursed for incidental expenses.

The cost of complying with the overtime provisions of the FLSA is difficult to document at this time with scientific accuracy because of the ambiguity of many of the FLSA regulations and the conflicting interpretations which can be made of those regulations. We are convinced, based on the estimates which we have received from various cities, that the cost is close to $2.0 billion. In any case, the effect of the FLSA on the operation of city government, employer-employee relations, the collective bargaining process, and the delivery of public services is every bit as important as the dollar impact.

In New York, we estimate that the cost of complying with the FLSA will be about $40 million, not including start up, administrative, record-keeping, litigation, evaluation of personnel practices, and retroactive liability costs. Los

Angeles estimates that its costs are in the $70 to $80 million range; for Chicago, the estimate is in the $20 million area; Baltimore estimates $10 to $12 million with an additional $4 million in one time start up costs. Attached is a list of cost estimates from various other cities showing a major impact on cities of all sizes and from all regions. We stongly believe that Congress has sufficient evidence before it to act on the FLSA and we are opposed to any further delays under the guise of a search for the most scientific data possible. We do not have any more time for data gathering.

Enactment of amendments to the FLSA which recognize the unique responsibilities of state and local government is fully consistent with the legislative approach used by Congress for other categories of employees where there are special problems. Congress has already established exemptions and special provisions which are designed to accommodate the particular needs of various employers. For example, the FLSA includes exemptions ans special provisions for:

- Taxicab drivers
- Car salespersons
- Employees of movie theaters
- Babysitters and employees engaged to provide "companionship" service for those who are unable to care for themselves
- Persons engaged in the fishing industry

- Outside buyers of eggs, poultry, or milk products
- Announcers, engineers, or editors employed by radio stations in cities with populations of less than 100,000
- Persons engaged in the business of processing maple syrup into sugar

It is hard for us to believe that state and local government employers do not merit similar consideration.

MAJOR PROBLEMS

Retroactivity

Congress should take immediate action to eliminate the retroactive application of the FLSA to states and localities, many of which are just beginning to understand the complex requirements of the FLSA and DOL's regulations. In 1974, Congress recognized the disruption which sudden application of the FLSA to public safety employees would cause and, accordingly, deferred the effective date for an eight-month period and established a four-year phase-in period providing cities with sufficient time to adjust labor practices. The transition problems caused by the Supreme court's surprise ruling in the Garcia case are no less significant in 1985 than they were in 1974. A similar transition period, particularly for police officers and firefighters, is clearly necessary to minimize disruption for both the city and its employees.

DOL, in a June 14 statement, announced plans to begin enforcement activities against states and localities on October 15 and to impose liability on states and localities retroactive to April 15. Moreover, a number of lawsuits have been filed by state and local employees in various jurisdictions seeking retroactive back pay and damages under the FLSA.
In fact, New York City has already been sued by a former employee who left City service six months prior to the Garcia decision.
In order to remove any doubt as to the question of retroactivity, Congress should eliminate all retroactive liability. Under DOL's enforcement policy, cities do not have sufficient time to revise schedules, payroll practices, budgets, computer programs, and collective bargaining agreements.

Collective Bargaining and Employee Relations

Compensation (including the form of compensation), comp time, and work schedules are generally considered to be matters for negotiation between the employer and the employees' bargaining unit. In fact, in many cities, all of these matters are established through the collective bargaining process. The effect of the Garcia decision is to make matters such as comp time non-negotiable and to place major restrictions on the parties' ability to negotiate over matters such as work schedules and nondiscretionary bonuses. This means that matters of vital importance to employers and employees can no longer be worked out in a mutually satisfactory manner at the bargaining table.

A substantial number of state and local employees who are covered by the FLSA (i.e., employees who are defined as nonexempt employees under the FLSA) are represented by collective bargaining units. In fact, according to DOL statistics, 48 percent of state and local employees (including management and nonmanagement) are organized. Unlike the private sector where only a small percentage of employees are represented by bargaining units (i.e., less than 20 percent), public sector employees have been extraordinarily successful in using the collective bargaining process to establish terms and conditions of employment which take care of the employees' needs.

Compensatory Time

Under the comp time concept, employees are allowed to accumulate overtime to be used at a later date in the form of time off from work. Under the FLSA, that practice is effectively precluded, despite the fact that many city employees prefer comp time to overtime compensation, apparently because of increased opportunities for time off. For cities, comp time plans provide the flexibility to respond to emergencies such as snow storms, accidents, and crimes without incurring unanticipated liability for overtime compensation. In most cases where collective bargaining agreements are in place (including New York City), the agreements include comp time plans, many of which have been established at the request of the employee bargaining unit. In

fact, comp time is of such importance to employees that there is already a lawsuit pending in federal court by a police union in Tallahassee, Florida seeking to enforce the comp time provisions of a collective bargaining agreement.

The FLSA effectively prohibits cities from offering comp time. The only circumstances in which anything like comp time can be used is under the so-called "time off" plan. The time off plan, however, cannot be used in any city with a one-week pay period. Under the time off plan, an employee who works overtime in the first week of a two-week pay period may be compensated by reducing the number of hours of work in the following workweek by the number of overtime hours worked in the prior week times one and a half. In other words, if a regular city employee works 50 hours in the first week of a two-week pay period (i.e., 40 regular hours and ten overtime hours), the number of hours worked in the second week would have to be reduced to 25 under the time off plan (i.e., 40 - (10 x 1.5) = 25) to avoid liability for overtime pay.

The time off plan is of no use to cities with weekly pay periods and of almost no utility to cities with two-week pay periods. First, it cannot be used at all to counterbalance overtime hours that are worked in the second week of a two-week pay period. Second, it would be an administrative nightmare to

implement. And third, it does not provide the city with sufficient flexibility to respond to emergencies (e.g., a snow storm or other natural disaster), which tend to occur in concentrated periods of time.

It should be recognized that comp time is as beneficial for the employee as it is for the employer. The employee can augment annual leave with the additional time accrued in the form of comp time. By combining the two, the employee can take extended vacations or cash out the comp time upon retirement. For the city, it provides a way to control the costs of overtime and to deal with seasonal fluctuations. In other words, comp time provides both the employee and the employer with scheduling flexibility.

In addition, cash compensated overtime has enormous pension implications. If the city is required to pay overtime to police and other law enforcement employees in lieu of comp time, the compensation in the 12-month period prior to retirement may increase substantially in some cases. This will in turn cause the employees' annual pension to increase. For example, in New York City, for each $1,000 paid to a police officer in overtime compensation in his or her last 12-months of work, the police officer's pension will be increased by $500 per year for the rest of the officer's life.

Special Details

DOL regulations define the city as a joint employer when police officers take special detail assignments with private employers in the community. The effect of this requirement is that the hours which the police officer works for the city and the hours worked on the special detail assignment must be totaled and liability for overtime compensation calculated on the basis of the total number of hours worked for the two jobs. In other words, in many cases, special detail assignments are not treated as separate employment under the FLSA regulations.

As a result, the city will be liable for overtime pay when police officers work special detail assignments in the private sector in many cases. For example, when the city, by an ordinance or any other method, requires that a police officer be hired by the sponsor of a parade, a concert, or a similar event "to control crowds at a stadium or to direct traffic at a sports arena or during a parade," it is treated as a joint employer with the second employer, according to DOL's regulations. Similarly, if the city serves as an active intermediary by approving the special detail assignment or by collecting the police officer's compensation from the second employer, it is also likely to be considered a joint employer.

In other words, if, because the police officer "moonlights" by working a second job in an area related to public safety (e.g., as a security guard) during his or her off duty hours, the total number of hours worked by the police officer for the two jobs are in excess of the maximum number of allowable hours under the FLSA (i.e., 43 hours a week), then the city and the second employer are jointly and severally liable for overtime pay on the basis of the total hours of work for the two jobs.

Arrangements of this nature are commonplace in many communities where private sector employers hire police officers to provide security service at events of various types such as sports events, concerts, and parades. The benefit to the community is enhanced public safety at these privately-sponsored events, while the benefit to the police officer is increased earnings during off duty hours. The result of applying the FLSA to cities is that many private sector employers will refuse to hire off duty police officers for special detail-type work because of the added cost of overtime.

Dual Employment

When an employee holds two separate jobs in different departments of the same city, the hours worked in the two jobs must be totaled and the two jobs treated as a single job for purposes of the FLSA. Moroever, if a police officer or a

firefighter has a second job with the city in some other capacity, the city would be required to pay overtime for the total number of hours worked in the two jobs in excess of 40 in a week. In other words, not only would the city be required to treat the two jobs as a single job, but it would also be prohibited from using the section 7(k) partial exemption from the overtime provisions providing for 171 hours for police officers in a 28-day period and 212 hours for firefighters.

The effect of this provision is to preclude city employees from volunteering for second jobs with the city. For example, in Minneapolis, police officers will no longer be able to volunteer for extra duty as a security guard during their off duty hours at various city-owned facilities such as libraries. Many cities will be forced to contract with private firms for those services and the city's employees will lose the opportunity to make extra money.

Regular Rate

The FLSA requires that the regular rate (i.e., the hourly rate which serves as the basis for calculating overtime compensation) be determined by adding nondiscretionary bonuses to the regular salary. In some cases (e.g., productivity bonuses), this requirement means that overtime pay must be retroactively recalculated. Complex compensation arrangements have evolved in

the public sector providing a wide range of incentives in the form of educational, longevity, and productivity bonuses, many of which are included in collective bargaining agreements. Because of the inclusion of nondiscretionary bonuses in the regular rate, cities will be forced to establish complicated record-keeping systems and to calculate the regular rate for each employee on an individualized basis, incurring substantial administrative costs.

Hours of Work for Public Safety Employees

The maximum number of permissible hours in a work period for firefighters and police officers in a 28-day period was set at 212 and 171 respectively by DOL in a 1983 rule making proceeding in which cities did not participate because they were exempt from the FLSA at the time under the NLC v. Usery ruling. While these numbers, the equivalent of a 53-hour workweek for firefighters and a 43-hour workweek for police officers, may appear reasonable in the abstract, they are not when considered in conjunction with DOL's overly broad definition of compensable time for public safety employees. For example, the regulations state that meal time must be treated as compensable time for purposes of determining overtime liability for firefighters and police officers. Similarly, sleeping time must be treated as compensable time even when a shift is 24 hours in length. This special rule for police officers and firefighters represents a departure from the standards used by DOL for determining

compensable time for other categories of employees and represents an unfair and unreasonable burden on state and local government employers.

Under the FLSA, the most common schedule for firefighters -- 24 hours on duty and 48 hours off duty (or nine duty shifts totaling 216 hours in a 27-day period) -- can only be continued if the city is prepared to pay overtime on a regular basis. Under a schedule of this type, a city would be liable for overtime compensation for 12 hours every 27 days because the maximum number of permissible hours in a 27-day work period is 204. At a minimum, the maximum number of permissible hours in a work period should be increased to 224 to accommodate the 24-48 work cycle. Similarly, cities should be provided with additional flexibility for the scheduling of police officers, particularly in light of the emergency nature of police work which necessitates that police officers frequently work unscheduled hours in order to complete criminal investigations.

Volunteers

The FLSA should be amended to make clear that states and localities may continue to use volunteers without being subject to the minimum wage and overtime provisions of the FLSA. The use of volunteer firefighters, which presently number an estimated 1,000,000, is likely to become very costly for states and

localities unless changes are made in the FLSA regulations. Under the existing DOL regulations, a volunteer firefighter who receives more than $2.50 per call as a stipend is construed to be an employee unless it can be shown that the volunteer's incidental expenses were in excess of $2.50. The use of volunteer firefighters is a long-standing practice throughout the nation and that practice is likely to be discouraged by DOL's regulations which require extensive record-keeping and will limit the governing body's ability to reimburse the volunteer for difficult to document expenses, such as automobile, cleaning, and training costs.

This regulation means that, unless the city is prepared to pay volunteer firefighters the minimum wage of $3.35 per hour and overtime compensation as appppropriate, it must reduce the reimbursement provided to volunteers to the level permitted under the FLSA or end the use of some of its volunteers.

Additionally, many cities have police reserve forces which perform volunteer services such as helping to search for lost children and directing traffic at churches. These forces often include police trainees and off duty police officers. Under the FLSA, they must be compensated whenever they perform volunteer services which are in any way similar to police work. As a result, police reserve forces may have to be disbanded or new restrictions established as to who can serve in reserve forces.

Classification of City Employees as Exempt Professional, Administrative, or Executive Employees

The existing regulations defining exempt professionals, administrators, and executives were developed primarily in the context of private sector employment practices. They do not take into account such matters as civil service systems which establish different employee classifications than do the FSLA regulations. For example, in New York City, we have over 250,000 employees working in over 5,000 service job classifications. Moreover, the existing regulations are not compatible with existing collective bargaining units, many of which now include members who may qualify under the FLSA as exempt employees. In other words, members of the same bargaining unit will not be entitled to the same FLSA overtime benefits and needless claims of discrimination among members of the same bargaining unit may arise. It is essential that the provisions of the FLSA defining exempt professional, executive, and administrative employees be revised to reflect the differences between state and local employment and private sector employment, particularly when civil service laws and collective bargaining are involved.

LEGISLATIVE SOLUTION

We strongly support the enactment of legislation which would exempt state and local employees from the overtime provisions of the FLSA, eliminate retroactive liability, and make clear that individuals performing service for a state or local government on a volunteer basis are not subject to the FLSA. Under legislation of this type, cities could continue to negotiate with their employees over work schedules, nondiscretionary bonuses, and comp time. Matters of fundamental importance to both the city and its employees would be left to determination at the local level, consistent with the needs of the city and the employees.

I have described a number of complex problems which are directly attributable to the FLSA. The only solution of which I am aware that takes care of these diverse problems and addresses the varying needs of the nation's cities is legislation which exempts states and localities from the overtime provisions of the FLSA and excludes state and local volunteers from the FLSA. We are ready and willing to work with the Subcommittee and other members of Congress to fashion a solution which would address our problems while treating employees fairly.

CONCLUSION

The effect of the Garcia decision is to interfere with negotiations between the city and its employees. We cannot negotiate schedules to any significant extent because of the limitations of the 40-hour workweek and of the section 7(k) partial exemption for police officers and firefighters. Similarly, comp time is effectively precluded and nondiscretionary bonuses create record-keeping and administrative problems.

The FLSA has been applied to cities by the courts and DOL in a manner which fails to properly take into account the governmental responsibilities of cities. Moreover, it comes at a time when cities are facing the proposed termination of General Revenue Sharing (GRS), a program that has been used by many cities for police and fire departments. In addition, a key provision of President Reagan's tax proposal is the elimination of the deductibility of state and local taxes, a proposal which the Treasury Department has estimated will reduce municipal revenues. In other words, just as we are hit with a costly federal mandate, our fiscal capacity to pay the additional costs of complying with the overtime provisions of the FLSA or to raise more local revenues is in jeopardy.

Congress must act before October 15 to ensure that cities can carry out their basic governmental responsibilities without unnecessary federal interference. We urge expedited action on FLSA legislation without any encumbering amendments that could delay action on a matter of fundamental concern to cities and city employees.

The day of reckoning for cities is fast approaching as DOL prepares to begin enforcement activities on October 15 and the number of lawsuits filed by employees mounts. The failure of Congress to act by October 15 will inject uncertainty and confusion into employer-employee relations, as many long-standing employment practices are terminated or significantly altered. It will unnecessarily burden cities during a period of difficult financial times. It will mean that taxes must be increased and public services reduced. And it will mean lay offs in some communities. We urge immediate Congressional action.

Thank you.

ESTIMATED ANNUAL COST OF FLSA COMPLIANCE FOR SELECTED CITIES

City	Annual Cost	Population	Comments
Akron, Ohio	$625,000	237,177	
Alhambra, Calif.	400,000	64,615	
Atlanta, Ga.	3,000,000	425,022	
Baltimore, Md.	10,000,000-12,000,000	786,775	
Battle Creek, Mich.	318,000	56,339	
Chapel Hill, N.C.	100,000	32,421	
Chicago, Ill.	20,000,000	3,005,072	
Cincinnati, OHio	300,000	385,457	
Cleveland, Ohio	4,650,000	573,822	
Columbia, S.C.	387,000	101,229	--1487 employees --$64,000,000 budget
Dade City, Fla.	10,000	4,923	--95 employees --estimate is for Labor Day Weekend alone (overtime due to hurricane Elena)
Denver, Colo.	1,850,000	491,396	
Durham, N.C.	400,000	100,381	
Euclid, Ohio	175,000	59,999	
Findlay, Ohio	90,000	35,954	
Fort Lauderdale, Fla.	250,000	153,256	--for termination of comp time in police department alone

Grand Rapids, Mich.	350,000	181,843	
Greenville, S.C.	359,000	58,242	--2 % of city's budget
Huntington Beach, Calif.	585,000	170,505	
Lakewood, Colo.	125,000	112,848	--1000 employees
Los Angeles, Calif.	70,000,000-80,000,000	2,966,763	
Madison, Wis.	600,000	170,616	
Miami, Fla.	1,300,000	346,931	
Milwaukee, Wis.	2,400,000	636,212	
Nashville, Tenn.	750,000	455,651	--for termination of comp time in police department alone
New York, N.Y.	40,000,000	7,071,030	
Palo Alto, Calif.	713,000-888,000	55,225	
Peoria, Ill.	500,000	124,160	--750 city employees
Petersburg, Va.	240,000	41,055	
Phoenix, Ariz.	4,000,000	764,911	--assumes no retroactive liability
Portland, Me.	180,000	61,572	
Raleigh, N.C.	233,000	149,771	--1915 employees
Salt Lake City, Utah	2,000,000	163,033	--$152,000,000 budget --1.35 percent of budget
San Diego, Calif.	6,800,000	915,956	

San Jose, Calif.	7,000,000-12,000,000	636,550	--$5,000,000-9,000,000 for public safety
St. Paul, Minn.	3,000,000-5,000,000	270,230	--for police and fire
Suffolk, Va.	100,000	47,621	
Toledo, Ohio	1,700,000	354,635	
Virginia Beach, Va.	2,000,000	262,199	
Warwick, R.I.	600,000	87,123	
West Allis, Wis.	100,000	63,982	
Westminster, Colo.	178,000	50,211	
Total	$207,543,000	22,768,558	

STATEMENTS OF VICTOR GOTBAUM, PRESIDENT OF AFSCME, NEW YORK CITY LOCAL; JOHN A. GANNON, PRESIDENT OF THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS; JOHN J. SWEENEY, GENERAL PRESIDENT, SERVICE EMPLOYEES INTERNATIONAL UNION; AND PEGGY CONNERTON, CHIEF ECONOMIST OF SERVICE EMPLOYEES INTERNATIONAL UNION

Mr. MURPHY. The next witnesses we will ask to serve as a panel. Will you please come up and take your seats? Mr. Victor Gotbaum, president of AFSCME, New York City local, for rebuttal; Mr. John A. Gannon, president of the International Association of Firefighters; Mr. John J. Sweeney; and Ms. Peggy Connerton, chief economist of the Service Employees International Union.

Will you take your seats, and we will proceed in the order they were called.

Mr. Gotbaum, you may proceed with your testimony.

Mr. GOTBAUM. Let me briefly talk to the mayor's points. He used the word "outrageous" in terms of putting local government employees under the Fair Labor Standards Act. He used the word "outrageous" three times in his testimony.

What moves me and really impresses me is that 80 percent of the work force is under that act. What he is really stating, therefore, is he wants a special privilege of extricating local government, local State employees.

The burden of his argument is a cost factor, and I am not here to state there are never costs. Obviously, if you have a minimum wage, obviously if you raise wages, you do have costs.

But his burden, and the outrageous aspect to me in terms of his burden, is that he came here and gave you figures that we cannot even find or define.

In fact, 90 percent of the white-collar force, people whom we represent, work a 35-hour week, so they are unaffected by this.

What it means, therefore, in terms of overtime, the total bill we have is $45 million. Where he gets the $20 million from, we don't know, and since our economists are fairly good and have been around for a long time, we would be very interested in getting those figures, because the total bill is $45 million.

We don't know where the $20 million comes in for our people. The interesting aspect of it, while the mayor defines collective bargaining as an excellent process, we happen to agree.

I think it is a beautiful democratic process, an exceptionally fine labor management process, one in which we have resolved our problems.

I fail to understand why he is here. I am concerned more about easily some 60 to 70 percent of local employees who neither have collective bargaining or abortive kinds of collective bargaining. Those are the people to whom you have to talk.

Now, even if his figures are correct, the number comes out to four-tenths of 1 percent. We just negotiated a contract. The firefighters and police, the teachers, have negotiated a contract. In these negotiations, our cost was about 19.1 percent of the teachers, with a difficult problem of beginning rates, was a little more than 20, the firefighters about 20.5, the firefighters and police.

I won't go into the reasons why, but we negotiated. I am now told a burden, even if his figures are correct—and I think the word "outrageous" should be used there—four-tenths of 1 percent is going to disconnect the budget.

It is going to make for terrible difficulty. It just makes no sense to bring it here and burden you and your time with these kinds of nonsensical figures.

Let me come now to another point, a point of volunteers. The Fair Labor Standards Act already protects the mayor and his volunteers in regard to overtime. That act only comes into being when a person doing the same work "voluntarily works overtime."

It was put in there to avoid exploitation, you know, to say to the secretary or the laborer, "Joe, John, go in there and work, you know, the extra few hours." It does not, sir, pertain to foster grandmothers.

In fact, I am willing to negotiate a clause in the next contract with the mayor, we leave foster grandmothers out of it, except if foster grandfathers want to do something about it.

To bring in foster grandmothers, has absolutely no relationship to this as these costs have no relationship to this.

Finally, because my colleagues will add, in terms of their needs, let me bring out this key point. There is no democracy that seems to have greater disdain for its public servants than this American democracy—that when you tell 20 percent of the work force they cannot have what 80 percent of the work force has, sir, you denigrate them, sir.

You tell them they are less than equal. You tell these working men and women that you cannot have what this Congress, in its wisdom, has given to 80 percent of their brothers and sisters.

The cost is small. The greater cost would be a further demoralization of the working men and women who serve the citizens of these United States.

The greater cost would be a rejection of their right when you stated to 80 percent of the working men and women that they can have those rights. This really is the heart and nub of it.

I love the collective bargaining process. I wish 100 percent of the local and State government employees had decent collective bargaining rights. I wish they had it in Poland and black workers had it in South Africa.

It is an intensely magnificent, democratic right. But it has little to do with this law at this point. You make the law to protect those who don't have rights, and that is the main reason why I am here.

Council 37 in New York can take care of itself. We can take care of ourselves rather adequately. But there are millions upon millions of workers who don't have that protection.

Why you give it to 80 percent of the working men and women and not to them goes beyond my own belief. This is really the burden of my argument, Mr. Chairman.

I want to say finally, in closing, that I like your questions for the mayor. I will stick with your questions. I think they were very good.

My final point—the mayor who is much wiser now, says based on his testimony he hopes to get to heaven, I guess. If Ed Koch gets to heaven, I don't want to go there.

Thank you, very much.

Mr. MURPHY. Mr. Gotbaum, we will accept the testimony you have submitted on behalf of AFSCME into the record since you condensed what you have to say, and we will reserve our questions until we hear from the three panelists.

[The prepared statement of Victor Gotbaum follows:]

PREPARED STATEMENT OF VICTOR GOTBAUM ON BEHALF OF THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

Introduction

The American Federation of State, County and Municipal Employees (AFSCME), representing over one million federal, state and local government employees, submits the following statement on Congress' 1974 extension of Fair Labor Standards Act (FLSA) protections for public employees, an extension recently affirmed by the Supreme Court in its Garcia decision.

AFSCME welcomed the bipartisan extension of the nation's minimum wage and hour laws to public employees in 1974 and welcomes the Court's decision finally allowing implementation to go forward. AFSCME strongly opposes efforts to repeal this coverage.

Opponents of FLSA coverage for public employees argue that compliance with the Act would be prohibitively expensive and administratively difficult. They are particularly critical of the Act's restrictions on the use of compensatory time, restrictions designed to limit employer abuse of overtime.

In my testimony today I will argue that:

-- the Act allows employers considerable flexibility in the private sector and that in its 1974 amendments Congress provided for even greater flexibility in the public sector;

-- public employers' estimates of the costs of FLSA coverage fail to take this flexibility into account;

-- the actual cost of FLSA coverage to public employers may be even less than one half of one percent of the nation's total public payroll;

-- public employers are no different than private employers when it comes to urging their employees to routinely work overtime without regard to safety or personal considerations; and that,

-- under certain circumstances, the Act's flexibility can permit public employees a choice between compensatory time or premium pay for overtime worked.

The Cost of Public Sector FLSA Coverage

When Congress was debating public employee coverage in the early 1970s, the U.S. Department of Labor (DOL) was responsible for studying the "economic effects" of such coverage. According to DOL, the cost of minimum wage compliance was negligible. Moreover, the study also showed the cost for overtime purposes would be less than one percent of wages. DOL's report to Congress stated:

> "If a forty-hour Federal overtime standard were in effect at the time of the survey, the premium pay required for these hours (hours worked in excess of forty) would have approximated one percent of the weekly wage bill."

The report also stated:

> "The actual impact of a forty-hour standard would have been less because a substanial proportion of the employees receive premium overtime pay."

It is clear that the impact of a forty-hour standard would have been less than one percent of the wage bill of state and local governments.

Another Congressionally-requested DOL study was done in 1975 dealing specifically with hours worked by public safety employees. This study found that overtime costs for police would be 1.4 percent of the police department wage bill while the additional cost to cover firefighters would be 2.6 percent of fire department wages. Admittedly, the data in these studies is not current. But there is no reason to believe that the impact today would be any greater. On the contrary, it is entirely likely that the "economic effects" of extending FLSA protection today would be less than in 1974.

Between 1966 and 1976 public school employees and public hospital employees were covered by the FLSA. Except for public safety, state and local government workers were actually covered by FLSA overtime standards for a short period from May 1974 until January 1975 when the Supreme Court ruled that coverage should be held in abeyance while the case was being considered. During both of these periods, many public employers changed their overtime policies to reflect FLSA standards, and collective bargaining agreements were also changed to comply with FLSA. In many cases, these personnel regulations and bargaining agreements

continue to provide time and one-half payments after forty hours, despite the decision in NLC v. Usery. Moreover, in the intervening decade, collective bargaining continued to be introduced and spread to new state and local jurisdictions. Many of these new post-NLC v. Usery collective bargaining agreements also adhere to FLSA overtime provisions. Because it is likely that a higher proportion of workers are now paid time and one-half, the economic impact of FLSA coverage for state and local governments would probably be less today than in 1974.

It is difficult, without considerable expenditures of resources to replicate the studies done by the Bureau of the Census for DOL and Congress in the 1970's. However, an educated look at the published numbers suggests that today additional annual costs to cover state and local government employees for overtime purposes are in the $500 to $700 million range -- or roughly .25 to .33 percent-- and certainly less than .5 percent of the current annual wage bill of $210 to $220 billion. And this makes the unlikely assumption that no employers will adjust work schedules to reduce the amount of overtime now being worked.

We have learned that the DOL has taken a look at the 1980 census tapes and made some FLSA cost estimates. According to these unpublished and unofficial figures, total overtime costs to state and local governments in 1980 would have been $433 million had these employers been covered by FLSA at that time. DOL estimates this cost based on data collected in the Current Population Survey (CPS). AFSCME believes that this $433 million estimate is overstated for the following reasons:

1) All hours worked in excess of regularly scheduled hours are assumed at 1-1/2 times pay. The fact is that many public employees work less than forty hours per week and FLSA does not require time and one-half until more than forty hours are worked. Therefore, a thirty-five hour employee is typically paid straight time for all horus worked between thirty-five and forty, which is permitted under FLSA.

2) It assumes that no public employee is now being paid time and one-half. The $433 million is a gross cost. Current overtime premiums actually being paid have not been deducted from this $433 million. The fact is that most AFSCME members actually receive premium pay. As far back as 1970, DOL reported that about 45 percent of all state and local government non-supervisory workers actually earned time and one-half.

3) It assumes that all public employees work 52 weeks per year. The fact is that many school employees work nine and ten months per year. To the extent that any of these employees worked overtime during the survey period, DOL has overestimated overtime costs.

But even if the $433 million cost is accepted, it amounts to only .27 percent of the estimated 1980 state and local government total wage bill of $162 billion. That is about one-quarter of 1 percent of the wage bill.

DOL also updated the 1980 data to assume a projected annual cost in 1984 of $733 million, again if state and local employees had been covered under FLSA during that year. Since the same procedures were followed in assuming 1984 costs, the $733 million is overstated to the same extent that the 1980 data is overstated. Even if we were to accept the $733 million as accurate, it amounts to only .34 pecent of the total $218 billion state and local government 1984 wage bill. That is, FLSA coverage would have cost state and local government employers an absolute maximum of one-third of 1 percent of total payroll in 1984.

Is this what the uproar is about?

Flexibility under the FLSA

The preceeding discussion of the cost of FLSA coverage to states and localities suggests that public employers can make adjustments in either work schedules or assignments in order to control and limit their overtime liability.

Unfortunately, the estimates that many Members of Congress are getting from their local officials do not make this assumption, often they are based upon worst case scenarios. The cost estimates that we have been able to examine reveal a complete misunderstanding of the Act or an unwillingness to take advantage of provisions in the Act which could limit overtime liability. In most cases we do not think that this is either intentional or invidious. However, some public employers have tried to get some of our locals to agree to changes in their contracts by claiming, wrongly, that the contracts violated provisions of the FLSA.

The Department of Labor has not helped to dispell widespread misunderstanding of the Act among public employers. Instead of answering specific questions about application of the nation's minimum wage and hour laws, its representatives at national meetings of government officials this year have insisted that

their hands are tied by the law. Instead of helping local elected officials understand the law, DOL's representatives have said that the only solution to their difficulties with the Act lies with Congress, in legislation. Without legislative relief, they've threatened, localities will have to live with the onerous pile of FLSA regulations that now trouble the private sector.

The Act is much more flexible than public officials have been led to believe.

First, the private sector has lived with the FLSA for almost fifty years, through periods of economic growth and recession. During this period, private sector employers have changed work shifts, work schedules, operating schedules and hiring practices to meet competition and production needs while avoiding excessive overtime penalities.

Second, the Act is more flexible for public sector employers than for private sector employers. In his testimony before the Senate Labor Subcommittee Assistant Attorney General Reynolds said that public employers "simply" can't live with "the strict forty-hour work week mandated by the FLSA." They don't have to. It doesn't apply to professional employees. It doesn't apply to supervisory employees. It doesn't even apply to police and fire personnel.

In 1974 when Congress extended FLSA coverage to state and local governments, it agreed that public safety, police and fire, employees warranted separate treatment under the Act. Without compromising the principle of premium pay for overtime worked, Congress granted state and local employers more flexibility with their public safety employees.

The point at which jurisdictions had to start calculating overtime was set at 43 hours per week for police and 53 hours for firefighters instead of the FLSA standard of 40 hours. The period within which public employers could compensate with time rather than cash for exceeding these hours was increased, on a prorated basis, from 7 to as many as 28. Congress, therefore, increased both the hours and the work period for the calculation of police and fire overtime. States and localities, for instance, would not have to pay cash for unexpected fire fighting overtime if a person's total time did not exceed 212 hours over 28 days or if a person was required to take comp time for overtime worked before the end of the same 28 day period. A homicide detective required to work "overtime" to follow a hot trail would not have to be compensated in cash at time and one half if his total hours did no exceed 171 over 28 days or if he was required to take comp time before the end of 28 days.

Finally many public employees work a less than forty hour work week. Any overtime these employees work between their regular work week and forty hours can be taken as comp time. It can even be banked for later use without violating the FLSA.

Let me give you an example of how cities, by ignoring the application of the Act in their haste to avoid its employer protections, have exagerated its impact.

The August 19th issue of "Nations Cities," the newsletter of the National League of Cities, reported that the Department of Labor had, in response to a request from Los Angeles, "eased" the lunchtime rule in the calculation of police overtime and that the change would result in a "savings of millions" to the city. Neither claim is true. DOL simply reiterated the long standing rules for excluding lunchtime from hours worked for the purposes of calculating overtime. Reading DOL's letter, the city realized that its original, uninformed estimate of the cost of FLSA coverage was high.

What do Public Employees want?

The FLSA gives management flexibility and permits the use of some compensatory time. Yet public employers argue that the Act's preference for premium pay over compensatory time for overtime work prevents them from giving their employees the comp time they want. They argue that comp time makes public jobs attractive, that comp time exists because the employees asked for it and that the loss of absolute freedom to utilize comp time will damage their relations with their employees.

When Congress originally adopted the overtime provisions in the FLSA it did so because it had learned that employers preferred to work current employees long hours than to hire additional employees. When it extended the Act to public employers in 1974 it did so recognizing that, in this respect, public employers were no different than private employers.

Overtime abuses continue in the public sector. Regular work weeks in excess of forty hours are not a rarity. Some managers simply refuse to grant employees permission to take accumulated comp time. Many jurisdictions expect their employees to be available to "volunteer" to work extra hours on weekends and holidays, some routinely, some without compensation. In some agencies, understaffing prompts managers to suggest that employees stay late for the good of the agency. Public employees are as willing as private sector employees, often more so because they are in the public service, to pitch in for their employer when extra effort is warranted. They deserve the same protections from their employers' temptation to abuse that

willingness that employees in the private sector enjoy. In addition, there are a significant number of jobs in the public sector where the weariness that accompanies long hours of work becomes a threat to the health and safety of the general public as well as the employee.

Because of reductions in federal aid to states and localities, employees in some of the most stressful public sector jobs are literally being forced to work involuntary scheduled overtime on a regular and continuing basis. Correctional facilities and mental health and mental retardation facilities throughout the country are understaffed. Thousands of employees in these facilities have long forgotten the luxury of a forty-hour work week. It is not surprising that these employees want and need more time off the job. Their own mental health and physical well being demand it. Unfortunately, because of understaffing, these employees build up incredible amounts of comp time that they never get to use. This is the worst sort of abuse of comp time, the kind of abuse FLSA was designed to prevent. Empty promises are not a solution to understaffing.

Where we have collective bargaining agreements, where members are able overtime to rationally impact their conditions of employment, we have found that they prefer cash to comp time for overtime worked, that they move from comp time to premium pay agreements.

AFSCME recently reviewed a sample of its own collective bargaining agreements covering more than 80 percent of its 1.1 million members. Less than two percent of AFSCME agreements reviewed provide for straight time -- either cash or compensatory time -- for purposes of overtime payments. Almost 93 percent of these AFSCME agreements provide for payments of time and one-half -- either cash or compensatory time. Five percent of these agreements are "mixed," providing for time and one-half cash or compensatory time on a straight time basis.

A review of the group of the 93 percent of AFSCME agreements providing time and one-half shows that 63 percent of this group provide cash payments of time and one-half only; and 35 percent provide cash or compensatory time at time and one-half; only two percent provide compensatory time only at time and one-half.

Across the nation AFSCME locals and public employers are working together to bring their contracts into compliance with the FLSA. By and large these negotiations have gone smoothly. In some places, like Minnesota, we've had to dismantle comp time banks. Our members there indicated that their supervisors granted use of comp time rather arbitrarily anyway. In other places, like the University of Illinois, we've worked out rather novel solutions. There overtime will be compensated in cash at

time and one-half when its worked then banked so that overtime hours may be taken later as leave without pay.

In the long run we think that our experience to date indicates that labor relations in the public sector under the FLSA can be as imaginative and as innovative as those in the private sector. Employees desiring comp time will be able to work out relationships without sacrificing the principle of premium pay for overtime worked. Perhaps, at the same time, some of our employers will come to realize that often elaborate comp time systems exist in the public sector because of their unwillingness to discuss premium pay or to confront the issue of understaffing not because of employee choice. In the absence of FLSA protections the employees had no choice but to accept comp time in one form on another.

Volunteers: A Real Issue Under FLSA?

In addition to costs associated with overtime, opponents of FLSA coverage of state and local government employees have claimed that it would virtually destroy the ability of these governments to make use of volunteers. At best this charge is misreading of the law; at worst it is a purposeful distortion of the facts. The law simply recognizes that an employee cannot be both a paid employee and a non-paid volunteer while performing the same type of work for the same employer.

Essentially, the guidelines provide that "nominal" payments do not transform a volunteer into an employee. For example, payments that average $2.50 per call to volunteer firefighters will be considered nominal. Payments in excess of this amount may also qualify as nominal, depending upon the distances which must be traveled and other expenses incurred by the volunteer. It is not necessary for the agency to maintain an exact record of expenses. Where individuals receive more than a nominal amount or payment not reasonably approximate to expenses incurred by them, they are employees rather than volunteers.

Police and firefighters of one jurisdiction may engage in protection or law enforcement activities on a voluntary basis for another jurisdiction where there is no mutual aid agreement or other relationship between the two jurisdictions. They cannot, however, perform fire protection or law enforcement activities on a voluntary basis for their own agency, although they can engage in other activities not directly related to these primary functions. (Of course these other activities may themselves become compensible if they become expected and routine, if they become a condition for primary employment.)

For example, an office employee of a hospital may volunteer to sit with a sick child or elderly person during off-duty hours as an act of charity. An employer-employee relationship will not exist with respect to such volunteer. However, if an office employee volunteered to perform office duties for the hospital which is his or her employer, such time would be considered as compensible hours of work for purposes of FLSA.

In its June 14, 1985 advisory booklet entitled State and Local Government Employees and Fair Labor Standards Act, the Department of Labor emphasized that FLSA does not prohibit volunteers in public service. This booklet advises that:

> "The Supreme Court has made it clear that FLSA was not intended 'to stamp all persons as employees who, without any express or implied compensation agreement, might work for their own advantage on the premises of another.' In administering FLSA, the Department follows this judicial guidance in the case of individuals serving as unpaid volunteers in various community services. Individuals who volunteer or donate their services, usually on a part-time basis, for public service, religious, or humanitarian objectives, not as employees and without contemplation of pay, are not considered as employees of the religious, charitable, and similar nonprofit organizations which receive their services."

It should again be emphasized that FSLA prohibits only the inappropriate use of volunteers. It is not appropriate and therefore prohibited for an employee to be both a paid employee and a nonpaid volunteer while performing the same type of work for the same employer. To permit any employee to "volunteer" to perform unpaid work similar to work for which he/she is paid would subject such an employee to unreasonable pressure from the employer to volunteer his or her "free" time beyond forty hours of work.

Conclusion

In this testimony, particularly in the sections on FLSA flexibility and public employee preferences, we have tried to show that it is the extension of FLSA coverage to public employees that finally gives them the opportunity to choose between comp time and cash for overtime worked. The states and localities would have you believe the opposite. They argue that

the extension of FLSA protections precludes the use of comp time in the public sector.

In response to this argument, legislation has been introduced to allow public employers to work out a mutually agreed upon overtime arrangement providing a choice between pay or comp time with their employees. This is virtually impossible to fairly or practically legislate. While it might be possible where collective bargaining exists, many public employees do not enjoy full collective bargaining rights. Currently this kind of "mutual" agreement is permitted in hospitals. More often than not in these hospitals, the employer's preference, comp time, becomes the rule. Given the inherently unequal relationship between employers and employees, comp time in lieu of cash, not choice, will remain the condition of employment in the public service if this legislation is substituted for FLSA coverage.

Perhaps the most disturbing element in all of the conflicting claims you've heard is the absence of any reference to equity or fairness. Prior to Garcia, about 80 percent of all non-supervisory workers in the nation were protected by FLSA. State and local government workers were the last major group to be protected.

Is it fair to extend FLSA protection to the one-half of the nation's trash collectors who work for private firms while excluding the other one-half who work for local governments? Is it fair to mandate FLSA coverage for hospital workers employed in private non-profit hospitals and refuse to extend similar protection to public hospital workers? What national policy would declare it fair that a VDT operator employed by the privately-owned gas, electric or telephone company is protected by FLSA but that the VDT operator at the City-owned water plant does not deserve the same protection? Should public safety workers employed by private firms be removed from coverage if governments' public safety workers are to be excluded?

FLSA works in the private sector. It works in the Federal Government. It worked in state and local governments in schools and hospitals from 1966 to 1976, and for other non-public safety employees for a brief period in 1975. It is beginning to work again. It should be allowed to continue.

FAIR'S FAIR

An Examination of Overtime Pay for Public Employees Under the U.S. Fair Labor Standards Act

AFSCME
in the public service

AFSCME®
American Federation of State, County and Municipal Employees, AFL-CIO
1625 L Street, N.W., Washington, D.C. 20036
Telephone (202) 429-1000
Telex 89-2376

Gerald W. McEntee
President

William Lucy
Secretary Treasurer

Vice Presidents

Ronald C. Alexander
Columbus, Ohio

Dominic J. Badolato
Berlin, Conn.

Joseph Bolt
Richmond, Ind.

Joseph M. Bonavita
Boston, Mass.

Robert A. Brindza
Columbus, Ohio

Ernest B. Crofoot
Baltimore, Md.

Steve Culen
Chicago, Ill.

Lawrence V. DeCresce
Columbus, Ohio

Albert A. Diop
New York, N.Y.

Danny Donohue
Hauppauge, N.Y.

James Glass
Lansing, Mich.

Victor Gotbaum
New York, N.Y.

Blondie P. Jordan
Orlando, Fla.

Edward J. Keller
Harrisburg, Pa.

Joseph J. Kreuser
Menomonee Falls, Wisc.

Faye D. Kruhn
Kasota, Minn.

Marilyn LeClaire
Columbiaville, Mich.

George Masten
Olympia, Wash.

Joseph E. McDermott
Albany, N.Y.

William L. McGowan
Albany, N.Y.

Donald G. McKee
Des Moines, Iowa

Jack Merkel
Trenton, N.J.

Russell K. Okata
Honolulu, Hawaii

George E. Popyack
Redwood City, Calif.

Betsye W. Roberts
New York, N.Y.

Earl Stout
Philadelphia, Pa.

Garland W. Webb
Baton Rouge, La.

Maynard White
Houston, Texas

The U.S. Supreme Court Garcia decision extended coverage of the Fair Labor Standards Act to state and local government employees for the second time. Garcia reversed the 1976 NLC v. Usery decision which denied the Act's protection to these employees.

Public employers are exaggerating the economic impact of applying FLSA and are asking Congress to once again exempt their workers. On behalf of its 1.1 million members, AFSCME opposes this exemption for a variety of reasons, but primarily because it would be bad public policy, based on misinformation. And it would not be fair. The facts are:

- Prior to Garcia, state and local government employees were the only major group of workers totally excluded from FLSA coverage.
- Department of Labor studies in the 1970s concluded that protecting state and local government employees under the overtime provisions of FLSA would cost less than one percent of the total wage bill. More specifically, overtime costs for police would be only 1.4 percent of the police department wage bill and for firefighters the cost would be 2.6 percent of fire department wages.
- Under existing regulations, overtime payment for firefighters need not begin until after 53 hours of work, and for police until after 43 hours of work.
- The economic impact of FLSA coverage for state and local governments would probably be less today than in 1974 because a higher proportion of workers are paid time and one-half overtime.
- Almost all AFSCME collective bargaining agreements provide time and one-half for overtime.
- FLSA permits state and local governments to use volunteers in appropriate situations.

o Management has considerable flexibility in its use of overtime. Overtime costs can be controlled through good management practices.

For all of these reasons, state and local government workers deserve to be protected by FLSA. They deserve the same "minimum standard of decency" as all other American workers.

Fair's Fair.

Gerald W. McEntee
International President

William Lucy
International Secretary-Treasurer

FAIR'S FAIR: AN EXAMINATION OF OVERTIME PAY FOR PUBLIC EMPLOYEES UNDER THE U.S. FAIR LABOR STANDARDS ACT

Introduction

The Fair Labor Standards Act (FLSA) was enacted in 1938, establishing nationwide minimum wage standards for the first time. Along with Social Security, FLSA was regarded as one of the most far-reaching, farsighted programs ever adopted in the United States. It proclaimed Congress' intent to ensure "the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers..." Originally, FLSA covered only about one-third of the non-supervisory workforce. Over the years, it was amended and expanded to include coverage of previously excluded groups of workers. By the early 1980s, FLSA was estimated to cover over 80 percent of the non-supervisory workforce. In fact, state and local government employees were the only major group of workers totally excluded. Even federal workers have now been protected by FLSA for more than a decade.

In 1966, Congress first extended coverage to a limited number of public employees, mostly in schools and hospitals. In the early 1970s, Congress again debated the issue of extending FLSA protection to state and local government, as well as federal employees. In 1974 Congress did amend FLSA to include government workers, thereby agreeing that these employees should be guaranteed the same "minimum standard of decency" as other workers.

Some state and local government officials made dire predictions about the devastating economic impact of paying state and local government workers the same minimum wage required of employers in the private sector. Public employers went to court seeking to have FLSA coverage declared unconstitutional. Eventually, the Supreme Court ruled in favor of employers in its June 1976 National League of Cities v. Usery decision. In his dissent, Justice Stevens said in part, "The Court holds that the Federal Government may not interfere with a sovereign state's inherent right to pay a substandard wage to the janitor at the state capitol."

Congressional Caution

In 1974, Congress proceeded very deliberately and cautiously prior to applying FLSA protections to state and local government employees. In fact, when Congress was debating public employees coverage in the early 1970s, the U.S. Department of Labor (DOL) was responsible for studying the "economic effects" of such coverage. According to DOL, the cost of minimum wage compliance was negligible. Moreover, the study also showed the cost for

overtime purposes would be less than one percent of wages. DOL's report to Congress stated:

> "If a 40-hour Federal overtime standard were in effect at the time of the survey, the premium pay required for these hours [hours worked in excess of 40] would have approximated one percent of the weekly wage bill."

The report also stated:

> "The actual impact of a 40-hour standard would have been less because a substantial proportion of the employees receive premium overtime pay."

It is clear that the impact of a 40-hour standard would have been less than one percent of the wage bill of state and local governments.

Another Congressionally-requested DOL study was done in 1975 dealing specifically with hours worked by public safety employees. This study found that overtime costs for police would be 1.4 percent of the police department wage bill while the additional cost to cover fire fighters would be 2.6 percent of fire department wages. Admittedly, the data in these studies is not current. But there is no reason to believe that the impact today would be any greater. On the contrary, it is entirely likely that the "economic effects" of extending FLSA protection today would be less than in 1974 for reasons discussed below.

Another indication of Congressional understanding is found in the law's treatment of public safety employees. First, Congress phased in the overtime provisions for police and fire over a two and one-half year period during which overtime standards were to be gradually reduced. Second, virtue of specific provisions, employers at their election would not be required to pay overtime until fire fighters worked in excess of 53 hours per week and police in excess of 43 hours per week. Because of court decisions, these provisions were not implemented in state and local governments. They were applied, however, to Federal Government and private sector public safety workers.

Public Employers Conform

Except for public safety, state and local government workers were actually covered by FLSA overtime standards for a short period from May 1974 until January 1975 when the Supreme Court ruled that coverage should be held in abeyance while the case was being considered. During this time, many public employers changed their overtime policies to reflect FLSA standards, and collective bargaining agreements were also changed to comply with FLSA. In many cases, these personnel regulations and bargaining agreements continue to provide time and one-half payments after

40 hours, despite the decision in NLC v. Usery. Moreover, in the intervening decade collective bargaining continued to be introduced and spread to new state and local jurisdictions. Many of these new post-NLC v. Usery collective bargaining agreements also adhere to FLSA overtime provisions. Because it is likely that a higher proportion of workers are now paid time and one-half, the economic impact of FLSA coverage for state and local governments would probably be less today than in 1974.

The 1985 Court Decision

The Supreme Court overruled NLC v. Usery in its recent Garcia v. San Antonio Metropolitan Transit Authority decision. Now state and local government employees are again protected by FLSA. Essentially this means that they must be paid no less than $3.35 per hour and must be paid time and one-half for hours worked in excess of 40 hours per week. (The overtime standard for fire fighters is 53 hours and for police it is 43 hours.)

Public employers are once again making unfounded predictions about the additional costs imposed by FLSA requirements. But now the focus of their attack is on the overtime provisions, rather than the minimum wage standards. Some of the more exaggerated claims suggest that FLSA overtime compliance will cost state and local governments across the nation in the range of $3 to $4 billion annually. Virtually no evidence is presented to support these contentions.

The Cost Issue

Cost is but one of several important issues. At this time, reliable independent information as to the economic effects of FLSA coverage is simply not available. However, AFSCME recently reviewed a sample of its own collective bargaining agreements covering more than 80 percent of its 1.1 million members. Less than two percent of AFSCME agreements reviewed provide for straight time -- either cash or compensatory time -- for purposes of overtime payments. Almost 93 percent of these AFSCME agreements provide for payments of time and one-half -- either cash or compensatory time. Five percent of these agreements are "mixed," providing for time and one-half cash or compensatory time on a straight time basis.

A review of the group of the 93 percent of AFSCME agreements providing time and one-half shows that 63 percent of this group provide cash payments of time and one-half only; and 35 percent provide cash or compensatory time at time and one-half; only two percent provide compensatory time only at time and one-half.

AFSCME's best estimates of additional annual costs to cover state and local government employees for overtime purposes are in the $500 to $700 million range -- or roughly .25 to .33 percent -- and certainly less than .5 percent of the current annual wage

bill of $210 to $220 billion. And this makes the unlikely assumption that no employers will adjust work schedules to reduce the amount of overtime now being worked.

An analysis of the cost of compliance for state governments by the National Association of State Personnel Executives concluded that the costs would be well under one percent of their wage bill, and that these additional costs "are not significant."

Volunteers: A Real Issue?

In addition to costs associated with overtime, opponents of FLSA coverage of state and local government employees have claimed that it would virtually destroy the ability of these governments to make use of volunteers. At best this charge is a misreading of the law, at worst it is a purposeful distortion of the facts. The law simply recognizes that an employee cannot be both a paid employee and a non-paid volunteer while performing the same type of work for the same employer.

Essentially, the guidelines provide that "nominal" payments do not transform a volunteer into an employee. For example, payments that average $2.50 per call to volunteer fire fighters will be considered nominal. Payments in excess of this amount may also qualify as nominal, depending upon the distances which must be traveled and other expenses incurred by the volunteer. It is not necessary for the agency to maintain an exact record of expenses. Where individuals receive more than a nominal amount or payment not reasonably approximate to expenses incurred by them, they are employees rather than volunteers.

Police and fire fighters of one jurisdiction may engage in protection or law enforcement activities on a voluntary basis for another jurisdiction where there is no mutual aid agreement or other relationship between the two jurisdictions. They cannot, however, perform fire protection or law enforcement activities on a voluntary basis for their own agency, although they can engage in other activities not directly related to these primary functions.

For example, an office employee of a hospital may volunteer to sit with a sick child or elderly person during off-duty hours as an act of charity. An employer-employee relationship will not exist with respect to such volunteer. However, if an office employee volunteered to perform office duties for the hospital which is his or her employer, such time would be considered as compensable hours of work for purposes of FLSA.

In its June 14, 1985 advisory booklet entitled State and Local Government Employees and the Fair Labor Standards Act, the Department of Labor emphasized that FLSA does not prohibit volunteers in public service. This booklet advises that:

> "The Supreme Court has made it clear that FLSA was not intended to stamp all persons as employees who, without any express or implied compensation agreement, might work for their own advantage on the premises of another.' In administering FLSA, the Department follows this judicial guidance in the case of individuals serving as unpaid volunteers in various community services. Individuals who volunteer or donate their services, usually on a part-time basis, for public service, religious, or humanitarian objectives, not as employees and without contemplation of pay, are not considered as employees of the religious, charitable, and similar nonprofit organizations which receive their services."

It should again be emphasized that FLSA prohibits only the inappropriate use of volunteers. It is not appropriate and therefore prohibited for an employee to be both a paid employee and a nonpaid volunteer while performing the same type of work for the same employer. To permit any employee to "volunteer" to perform unpaid work similar to work for which he/she is paid would subject such an employee to unreasonable pressure from the employer to volunteer his or her "free" time beyond 40 hours of work.

"Voluntary Agreements": Unilateral Application

AFSCME is all too familiar with such "voluntary" arrangements. There is a provision in the law under which so-called voluntary agreements are now permitted. These "agreements" frequently become a sham in the absence of vigorous union vigilance. For example, FLSA provides that a hospital employee and his/her employer may reach agreement "before performance of the work" that a 14-day work period is accepted instead of a seven-day workweek. This simply means that 80 hours of work may be balanced out over 14 days rather than 40 hours of work over seven days if there is agreement between an employer and employee. But the way the provision works in practice is that the hospital merely announces the 14-day work period and if the employee shows up for work, it constitutes his/her agreement. In a very real sense, this so-called "voluntary agreement" has become nothing more than a unilaterally imposed condition of employment.

Are Work Schedules Frozen?

Virtually ignored in all of the commotion about "high" overtime costs is the employer's flexibility to change work shifts, work schedules, operation schedules and hiring practices to reduce hours of work and therefore avoid excessive overtime penalties. Employers in the private sector have done it for years when it is to their advantage and continue to do so. In

the absence of collective bargaining provisions to the contrary, the employer may do so unilaterally. Even under most public sector collective bargaining agreements the employer may change at least some of these conditions as a management prerogative. Here the employer must negotiate only the impact of the change on the affected workers. But the real point is that where a union is present--and it is present in a majority of government jurisdictions--it is likely that time and one-half provisions are already in effect. Remember, only two percent of AFSCME agreements provide straight time payments for overtime. Ninety-eight percent provide time and one-half payments for overtime. There is no reason to believe that AFSCME agreements are not typical of state and local government across the nation.

Management's Ability to Control Overtime

Beyond the provisions of collective bargaining agreements another concern should be addressed. Government jurisdictions typically budget in advance for expected overtime payments. To the extent that overtime is actually worked and paid for, it constitutes a real, even if anticipated, cost for employers. Departments are monitored and expected to live within their overtime budget just as they adhere to their overall budget. In short, the control of overtime is simply another measurement of adequate management.

But there is another form of overtime that is not budgeted and is not currently monitored with the same concern. It is paid on a straight compensatory time basis and at the discretion of lower-level management, including supervisors. In fact, it may never appear "on the books." Some jurisdictions refer to this as "voluntary" overtime and it is used for the personal convenience of supervisors, middle management or even the employee. It works something like this: The supervisor requests that an employee work overtime today in exchange for an equal amount of time off next week or some time in the future. Or, conversely, an employee makes the same request of his/her supervisor. In either event this use of "overtime" is frequently a matter of convenience rather than necessity.

Practices in New York City serve as one example. The City claims that the "estimated cost impact of FLSA" will be $39 to $40 million on a $10 billion payroll, or about .4 percent of the current wage bill. According to New York City, roughly one-half of this or about $20 million, is the cost to convert compensatory time to cash in the civilian agencies under the "City-Wide Agreement." According to AFSCME's New York City affiliate District Council 37, the major union involved in the City-Wide Agreement, the $20 million cost for civilian employees is too high.

According to DC 37:

1. Roughly 90 percent of the compensatory time earned by civilian employees is earned by white collar workers. Under the terms of the City-Wide Agreement these workers are given the option of compensatory time or cash (at straight time) for the first five hours of overtime worked (the hours between 35 and 40 per week). This is currently a liability, will not be affected by the new ruling, and therefore should not produce any additional cost.

2. Voluntary overtime is generally approved at the lowest supervisory level as an accommodation to the worker. Simply put, the City will see no increased cost if this practice is discontinued.

3. Current arrangements on flexible working hours cover more than 30,000 workers. As these plans have, by the City's account, significantly reduced lateness and absenteeism, continued implementation of Alternative Work Schedules should also reduce the use or need for voluntary overtime.

4. DC 37 disagrees with the cost the City places on the conversion of compensatory time to cash, and no basis has been provided for the calculations. In particular, it is important to know how the compensatory time earned between 35 hours and 40 hours per week was separated from the compensatory time earned over 40 hours. Since the total cost of mandatory overtime for civilians is about $70 million and for District Council 37 members is about $45 million, a cost of $20 million for compensatory time seems excessive. It also is an indictment of current management practices.

Historical Lesson

The assurance of minimum wage standards was one compelling reason for the enactment of FLSA. An equally compelling reason was to create additional employment opportunity during a devastating depression. The penalty of paying time and one-half for hours worked in excess of 40 per week would encourage employers to reduce overtime and possibly hire additional workers. Certainly today's economy is expanding, but not at a rate sufficient to reduce unemployment below seven percent--an unacceptably high level. Independent economists expect little improvement. It is simply bad public policy for some public employers to schedule employees to work 70 hours per week. Time and one-half penalties would encourage the hiring of additional employees.

Furthermore, employees in some of the most stressful public sector jobs are literally being forced to work involuntary scheduled overtime on a regular and continuing basis. Correctional facilities and mental health and mental retardation facilities throughout the country are understaffed. Thousands of employees in these facilities have long forgotten the luxury of a 40-hour work week. It is not surprising that these employees want and need more time off the job. Their own mental health and physical well being demand it. Reasonable public policy would permit these employees to return to "normal" 40-hour workweeks. Similarly, good public policy would insist that all levels of government should be the first employers to guarantee minimum standards to their employees, rather than the last.

Fair's Fair

Perhaps the most disturbing element in all of the confusing claims of overtime costs is the absence of any reference to equity or fairness. As mentioned earlier, prior to Garcia, about 80 percent of all non-supervisory workers in the nation were protected by FLSA according to DOL. State and local government workers were the last major group to be protected.

Is it fair to extend FLSA protection to the one-half of the nation's trash collectors who work for private firms while excluding the other one-half who work for local governments? Is it fair to mandate FLSA coverage for hospital workers employed in private non-profit hospitals and refuse to extend similar protection to public hospital workers? What national policy would declare it fair that a VDT operator employed by the privately-owned gas, electric or telephone company is protected by FLSA but that the VDT operator at the City-owned water plant does not deserve the same protection? Should public safety workers employed by private firms be removed from coverage if governments' public safety workers are to be excluded?

FLSA works in the private sector. It works in the Federal Government. It worked in state and local governments in schools and hospitals from 1966 to 1976, and for other non-public safety employees for a brief period in 1975. It should be given an opportunity to work again.

Fair's Fair!

Mr. MURPHY. The next panelist is Mr. John Gannon, president of the International Association of Firefighters. You may proceed.

Mr. GANNON. Mr. Chairman and members of the committee, I have submitted a more detailed statement, and I have with me Mr. Schaitberger from our staff to assist in answering questions with your permission.

The International Association of Firefighters is a national and international labor organization representing over 150,000 American firefighters employed primarily by State and local governments.

We are grateful for the opportunity to address you concerning the importance of the Supreme Court's decision in *Garcia* v. *San Antonio Metropolitan Transit Authority,* allowing the Fair Labor Standards Act to be applied to firefighters and other public employees as Congress clearly intended when it passed the 1974 amendments to that statute.

Unfortunately, for the last 10 years, the will of Congress as expressed in the 1974 amendments has been frustrated, and public employees have been deprived of the basic protections of the law.

Regrettably, today there are some city and State officials who are unwilling to give their fellow public employees the same fair labor standards that have been afforded so many other workers who aren't covered under the umbrella of the FLSA.

Historically, as each group of employers have been brought within the scope of the law at various times, there has been a crescendo of familiar complaints that will result in financial ruin, layoffs of many employees, and the like.

The record has shown these predictions to be inaccurate as employers reluctantly conform with the law without any significant adverse effect.

We are convinced the same results will be reached here as the cities and States come into compliance with the FLSA.

The 1974 amendments were achieved only after careful, painstaking consideration was given by both Houses, especially with regard to the economic concerns voiced by local governments in the area of police and fire services.

Rather than paying overtime compensation for hours worked beyond the traditional 40-hour workweek applicable to other employees under the FLSA, section 7 of the law enables a city or a State to avoid any overtime payments to firefighters until such time as they work more than 212 hours over a 4-week period.

The establishment of these higher standards and exemption of smaller public agencies under the 1974 amendments took into account the financial concerns of the local government officials.

It is apparent that some States and cities are advocating legislative amendments designed to sidestep the Court's recent ruling and disregard the will of the Congress as expressed by the overwhelming majority of Senators and Representatives in the 1974 amendments to the FLSA.

Simply stated, there is no basis now for future amending of the law at the behest of the public employers. Senator Schweiker said it best when Congress granted the 1974 amendments to firefighters and police, "They are long overdue members of our society, and they should have been recognized some time ago for the role they

perform as they risk their lives and limbs for us, and we have not even covered them up to this date."

This statement applies with even more greater force in the year of 1985. The minimum wage standards contained in the FLSA are not being challenged by public officials. It is the overtime premium provisions that have raised the specter of the huge costs and massive layoffs.

Their contentions, designed to create panic and to stampede—to reverse the intent of the *Garcia* decision, are plainly unfounded.

Now, the scope and level of the fire department operations are much different than they were a decade ago. The workload is heavier, the manpower complements have been reduced, and the average workweek has been shortened. For this reason alone, we doubt that there will be any kind of massive layoffs threatened by a few city managers who desire legislative changes.

Managers contend that the application of the FLSA standards will cause more overtime costs, relatively speaking, when applied to firefighters than to any other public sector job.

This may be true. If so, it means that more firefighters are scheduled to work more hours than a reasonable standard would suggest than any other occupational group.

What are the facts? Firefighters around the country have work schedules which vary from an average of 40 to 50 hours per week. One schedule is more prevalent in which—that the average is 56 hours per week.

The FLSA standard establishes a norm of 53 hours per week for firefighters. All hours worked beyond that number or 212 hours for a 28-day period shall require overtime premium pay.

However, the overtime premium will presumably be calculated as one-half of the regularly scheduled hourly rate. The regular hourly rate would, in most cases, be predicated on a 56-hour week.

Thus, most firefighters would be eligible for scheduled overtime, would receive 3 hours of half-time pay per week. This would increase their salary by 2.7 percent.

However, the actual cost will be even less since hours paid for but not worked are excluded from the calculation—any time a firefighter takes a shift of paid leave during a work period.

As an example, sick leave, vacations, personal leave, time off in lieu of a holiday, bereavement leave, and so forth, he will not be entitled to any overtime pay.

It is expected that most periods will be either 21 or 27 days in duration. If the work period is 21 days, there will be 17.4 work periods a year. If 27 days, there will be 13.5 work periods a year.

It is fair to assume that, in at least 5 of the 13.5 work periods or 6.5 of the 17.4 work periods, five fighters on the average utilize some form of leave. That is, they will lose their eligibility for overtime about 37 percent of the time or conversely, they will receive it 63 percent of the time.

This translates into an annual average salary increase of 1.7 percent.

On a national scale, it is estimated at about half of all publicly employed firefighters now are scheduled to work less than 53 hours per week. Therefore, the total impact of the FLSA on scheduled

pay for firefighters is an increase of less than 1 percent, or 1.7 divided by 2 gives us 0.85 percent.

Those communities that have thoroughly examined their obligation have readily adopted a strategy to bring them into compliance. Some examples are Fairfax, VA; Woodside Fire District, CA; Casper, WY; Milwaukee, WI, and others.

The politics of the FLSA to the Nation's public sector fire departments will only involve a marginal cost. There will be no catastrophy as urged by some public officials.

In the overwhelming majority of communities that pay a premium for overtime work, the added cost will not exceed 2 percent. Many fire departments are already in compliance and face no additional costs.

I might state Mayor Koch's fire department is in compliance at the present time.

In summary, we respectfully submit there is no need to amend or delay full application of the FLSA to public employers and their firefighters.

We are confident that the experience will show that public employers will be able to comply with the FLSA despite their unfounded predictions of financial doom, as other employers have been able to do when they were incorporated under the statute.

In 1974's amendments, Congress voted overwhelmingly to include virtually all public employees within the protection coverage of FLSA, and the law as it stands now should be given a fair chance to work.

Thank you, sir.

Mr. MURPHY. Thank you very much.

[The prepared statement of John Gannon follows:]

PREPARED STATEMENT OF JOHN A. GANNON, PRESIDENT, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, AFL-CIO, CLC

Mr. Chairman and Members of the Committee:

I am John A. Gannon, President of the International Association of Fire Fighters, AFL-CIO, CLC ("IAFF"). The IAFF is a national and international labor organization representing over 150,000 fire fighters employed primarily by state and local governments.

I am grateful for the opportunity to address you this morning concerning the importance of the Supreme Court's decision in Garcia v. San Antonio Metropolitan Transit Authority allowing the Fair Labor Standards Act ("FLSA") to be applied to fire fighters and other public employees as Congress clearly intended when it passed the 1974 Amendments to that statute. As you know, in the Garcia case the Court overruled its decision in National League of Cities v. Usery and concluded that it was, in fact, constitutional for Congress to extend the minimum wage and overtime protections of the law to state and municipal government employers. Unfortunately, for the last ten years, the will of Congress as expressed in the 1974 Amendments has been frustrated and public employees have been deprived of the basic protections of the law.

Now, at long last, the fundamental minimum wage and overtime safeguards of the FLSA are fully applicable to fire fighters and other public employees.

Regrettably, today there are some city and state officials who are unwilling to give their fellow public employees the same "fair labor standards" that have been afforded so many other workers who are covered under the umbrella of the FLSA. Historically, as each group of employers has been brought within the scope of the law

at various times, there has been a crescendo of familiar complaints that it will result in financial ruin, the layoffs of many employees, and the like. The record has shown these predictions to be inaccurate as employers reluctantly conformed with the law without any significant, adverse affects.

We are convinced that the same result will be reached here as the cities and states come into compliance with the FLSA. The advantages of continued coverage of public employees under the FLSA far outweigh any minor difficulties perceived by the cities' managers and, therefore, there is no present need to amend the law, nor is there any basis whatsoever for postponing the already long-delayed implementation of the law.

In considering the question of why fire fighters deserve the current protections of the FLSA, it is important to understand the legislative purposes of the statute and why Congress deemed it essential to cover fire fighters under the 1974 FLSA Amendments.

When Congress originally enacted the FLSA in 1938, it declared that the public policy of this country was to establish and maintain minimum standards of living necessary for the health, efficiency and general well-being of workers. Consequently, it required employers to pay their workers a minimum hourly wage and to compensate them at the premium rate of time and one-half for hours worked in excess of the normal workweek.

The remedial and humanitarian purposes of the law have been clear for the last 47 years. With respect to the overtime sections of the FLSA, it is well known that the twofold purpose of the provisions is to fairly and fully compensate employees for the

burden of having to work long hours for the benefit of their employer, while at the same time encouraging employers to reduce the hours of work and to hire additional persons. Essential to the achievement of these goals is the financial cost imposed on employers for overtime work under the FLSA. Specifically, it was intended that employers who desire to limit their labor costs would avoid forcing their existing employees to work extra hours at the premium rate of pay and instead would employ additional workers at the straight time rate, thus expanding employment opportunities.

In recognition of the noble purposes of the law, Congress has steadily broadened the coverage of the law to include various groups of public employees. For example, in 1966, Congress amended the FLSA to extend its protective provisions to certain public employees of schools, transit systems and hospitals. Although there were outspoken protests from these employers who estimated that the FLSA would impose impossible economic hardships, they managed to bring themselves into compliance with the law without serious difficulty.

In 1974, Congress once again determined that the boundaries of the statute should be enlarged to encompass virtually all employees of state and local governments, including employees engaged in fire protection activities. The legislative development of the 1974 Amendments reveals that the members of Congress were sensitive to the economic concerns expressed by state and municipal governments, especially in connection with the overtime obligations that would be owed to police and fire fighters. Nevertheless, the

view shared by most members of Congress at the time was that these public safety employees deserved essentially the same benefits and protections of the FLSA that are afforded to other workers.

The 1974 Amendments were achieved only after careful, painstaking consideration was given by both houses, especially with regard to the economic concerns voiced by local governments in the areas of police and fire services. A compromise bill was eventually reached in conference between the Senate and the House which produced the unique provisions in Section 7(k) of the FLSA and the much higher hourly overtime standards applicable to law enforcement and firefighting personnel. Those standards for fire fighters today are 212 hours for a 28-day work period (53 hours for a 7-day work period). In other words, rather than paying overtime compensation for hours worked beyond the traditional 40-hour workweek applicable to other employees under the FLSA, Section 7(k) of the law enables a city or state to avoid any overtime payments to fire fighters until such time as they work more than 212 hours over a four-week period. In addition, under Section 13(b)(20) of the legislation, smaller public agencies with less than five employees engaged in fire protection activities were completely exempt from the overtime requirements. The establishment of these higher hourly standards and the exemption of smaller public agencies under the 1974 Amendments adequately took into account the financial concerns of local governments officials. With these compromises in mind, on March 28, 1974, the Senate approved the bill reported out of conference by the lopsided vote of 71 to 19 and the House adopted the measure by even a larger margin of 345 to 50.

The President signed the bill on April 8, 1984, with the intention that the FLSA would be applicable to most public employees on May 1, 1974 and to fire fighters and police on January 1, 1975. Of course, as I mentioned earlier, the state and local governments have largely avoided the application of the FLSA for a full decade in light of the Supreme Court's misguided ruling in the National League of Cities case -- a mistake which has finally been corrected by the Court in its Garcia decision on February 19, 1985. In light of this ten year reprieve, it is difficult to see the justice in the demands of certain municipalities that seek a further exemption from the law.

It is apparent that some states and cities are advocating legislative amendments designed to sidestep the Court's recent ruling and disregard the will of Congress as expressed by the overwhelming majority of Senators and Representatives in the 1974 Amendments to the FLSA. Simply stated, there is no basis now for further amending the law at the behest of public employers and to the substantial detriment of fire fighters who have waited long enough for coverage under the FLSA. Senator Schweiker said it best, when coverage was granted under the 1974 Amendments to fire fighters and police: "They are long overdue members of our society and they should have been recognized some time ago for the role they perform as they risk their lives and limbs for us and we have not even covered them up to this date." 120 Congressional Record 8767 (1974). This statement applies with even greater force in 1985.

Aside from the basic proposition that fire fighters deserve the same equitable treatment accorded other employees under the FLSA, we would be remiss if we did not respond to the statements of certain city and state representatives who have sought to accomplish their legislative goals by grossly exaggerating the financial impact of the FLSA's overtime provisions, especially in the area of fire services. It has become almost a tradition whereby employers who wish to be relieved of their statutory obligations attempt to paint a picture of financial doom which, when tested by time, proves to be a picture that is divorced from reality.

In the sections below we show that the projections of the local government officials simply do not square with the facts.

THE ECONOMIC COSTS OF COMPLYING WITH THE FLSA ARE MINIMAL

The minimum wage standards contained in the FLSA are not being challenged by public officials. Apparently they believe that state and local government employees are paid at rates that exceed the minimum. We, in the IAFF take no consolation in that assumption, although we may concur with it. Regrettably, in those areas of the country where low annual salaries and lenthy workweeks are prevalent, a number of fire fighters receive hourly rates that are barely above the prescribed minimum of $3.35 per hour.

It is the overtime premium provisions that have raised the specter of huge costs and massive layoffs. These contentions, designed to create panic and a stampede to reverse the intent of the Garcia decision, are plainly unfounded.

A. Placing the 53-hour Per Week Standard in Perspective

As I mentioned earlier, no other worker covered by the FLSA has to work as many hours as the fire fighter before becoming eligible for overtime premium pay under Section 7(k). Under that provision, a fire fighter must work almost one-third more hours than the norm of 40 hours per week which applies to workers in the private sector and most others in the public sector.

The 53-hour per week standard is not new. It is based on a study of actual hours worked by fire fighters engaged in fire supression activities in 1975. The study was conducted by the Bureau of the Census and the Department of Labor and reflects the norm that existed ten years ago. But now the scope and level of fire department operations are much different than they were a decade ago. The workload is heavier, the manpower complements have been reduced and the average work week has been shortened.

It is common practice today for fire fighters to be trained as Emergency Medical Technicians or Paramedics, contrary to the experience of the 1970's. Firefighter/EMTs are first responders to all incidents at which emergency medical care may be required. As a result, the number of actual emergencies to which fire fighters now respond has increased dramatically over prior years. Considering the dual roles, the fire fighter's treatment under FLSA appears ironic, if not contradictory. The fire fighter who is cross-trained as an EMT and responds to fires and non-fire related emergencies in either or both capacities is subject to the unique provisions of Section 7(k) and is not eligible to receive overtime pay until he works more than 53 hours a week or 212 hours over a 28-

day period. Yet, the EMT working in a separate municipal department, fulfilling one important role but not two, is eligible to receive overtime premium pay after only 40 hours per week or 160 hours over a 28-day period.

In addition, fire fighters today have the responsibility of resolving situations involving a multiciplicity of hazardous materials that didn't exist a decade ago; they conduct more fire inspections requiring complex knowledge of a variety of toxic substances; they spend more time in public information campaigns, etc. Their workload -- and productivity -- per shift has increased substantially and the knowledge and skill requirements of the job have kept pace with the growth in technology.

This has all occurred during a period when fire departments have scaled back available manpower well below the levels which prevailed only a decade ago. We have experienced a period of rising demand for fire services with a shrinking work force to meet those demands. Because the fire fighting work force in most cities has been reduced to the bare minimum, it is extremely unlikely that the FLSA will cause any significant layoffs without placing the public safety in serious jeopardy. For this reason alone, we doubt that there will be the kind of massive layoffs threatened by a few city managers who desire legislative changes.

Finally, since 1975 many departments have reduced the scheduled hours of work for fire fighters. Such cities as Phoenix, Houston and Seattle, to name a few larger cities, as well as numerous smaller communities, have recognized the need to reduce the fire fighters' workweek to offset the expanded workload.

When all these factors are considered, a standard of 53 hours per week seems harsh. If a survey were taken this year, it would surely produce a lower norm than 53 hours per week. Under the circumstances, an attack on the current FLSA standard as it applies to fire fighters is not only unreasonable and without merit, it is unconscionable. If anything, the FLSA hourly standard should be lowered to reflect today's realities, not abolished as proposed by some public officials.

B. The Adoption of a 53-hour Standard Is Not Costly

Municipal managers contend that the application of the FLSA standards will cause more overtime costs, relatively speaking, when applied to fire fighters than to any other public sector job. This may be true. If so, it means that more fire fighters are scheduled to work more hours than a reasonable standard would suggest than any other occupational group.

What are the facts? Firefighters around the country have work schedules which vary from an average of 40 to 56 hours per week. The one schedule that is most prevalent is that which averages 56 hours per week.

The FLSA standard establishes a norm of 53 hours per week for fire fighters. All hours worked beyond that number (or 212 hours over a 28-day period) shall require overtime premium pay. However, the overtime premium will presumably be calculated at one-half of the regularly scheduled hourly rate. The regular hourly rate would, in most cases, be predicated on a 56-hour week. Thus,

most fire fighters who would be elibigible for scheduled overtime pay would receive 3 hours of half-time pay per week. This would increase their salary by 2.7%. The formula is:

3 overtime hours divided by 56 scheduled hours x .5 premium pay = 2.68% or,

$6 hourly rate x 56 hours = $336 (regular weekly pay)
$3 half-time premium rate x 3 hours = $9 (increase)
$9 divided by $336 = 2.68%

However, the actual cost will be even less since hours paid for but not worked are excluded from the calculation. Any time a fire fighter takes a shift of paid leave during a work period -- i.e., sick leave, vacation, personal leave, time-off in lieu of holiday, bereavement leave, etc. -- he will not be entitled to any overtime pay.

It is expected that most work periods will be either 21 or 27 days in duration. If the work period is 21 days, there will be 17.4 work periods a year (365 days divided by 21 = 17.4); if 27 days, there will be 13.5 work periods (365 days divided by 27 = 13.5).

It is fair to assume that in at least 5 of the 13.5 work periods or 6.5 of the 17.4 work periods fire fighters will, on average, utilize some form of leave. That is, they will lose their eligibility for overtime about 37 percent of the time or conversely they will receive it 63 percent of the time.

This translates into an annual average salary increase of 1.7% (2.68 x .63 = 1.69). This is a very modest cost indeed -- and it only applies to those fire fighters currently scheduled to work an average of 56 hours per week. On a national scale, it is estimated that about half of all publicly employed fire fighters now

are scheduled to work less than 53 hours per week. Therefore, the total impact of the FLSA on scheduled pay for fire fighters is an increase of less than one percent (1.7% divided by 2 = 0.85%). This is a negligible amount.

It should also be pointed out that fire department costs do not comprise a large share of municipal expenditures. According to the U.S. Bureau of Census, expenditures for fire protection constitute only 6.6% of total general city expenditures.[1] The proportion ranged from a low of 4.2% in cities of a million or more in population to a high of 9.0% in municipalities with populations from 50,000 to 99,999.

The total expenditure for fire protection in all municipalities throughout the country for 1982-83 was $5.941 billion. If we assume wages comprise 85 percent of fire protection costs, then the total wage cost was $5.050 billion. If that is increased by 1 percent as the result of the application of the FLSA standards, the total nation-wide cost of the increase would be only $50.5 million. This is less than some large cities alone have claimed would be the increased cost to them for complying with the new standards.

The requirement to pay overtime for all hours worked over an average of 53 per week should not present a costly problem to any municipality. As shown earlier, it is relatively inexpensive for cities currently paying an overtime premium for all hours worked

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[1] U.S. Department of Commerce, Bureau of the Census, City of Government Finances in 1982-83, p. 3.

over an average of 56 per week. For those cities whose trigger for paying an overtime premium is already less than 53 hours, there is likely to be no cost in complying with the FLSA. At worst, they may have to adjust their scheduling and work periods.

Indeed, those communities that have thoroughly examined their obligation have readily adopted a strategy to bring them into compliance. Two examples are illustrative.

Fairfax County, Virginia simply adopted a 28 day work period and maintained a work schedule averaging 56 hours a week. Considering the anticipated usage of paid leave, the County expects its increase in costs to be less than 2 percent.

Casper, Wyoming negotiated a different arrangement with its IAFF local. In a recently concluded collective bargaining session for a two-year contract, the City agreed to pay all fire fighters 3 hours of premium pay per week for every pay period throughout the year. Fire fighters will receive the premium overtime pay whether they take paid leave or not. This provision, obviously, not only meets but exceeds the requirements of the FLSA. On the other hand, it eliminates administrative costs (i.e., additional recordkeeping) which the City would otherwise incur.

The union acknowledged that this provision would increase Casper's fire department payroll costs by about 2.7%. This was taken into consideration in negotiating an across-the-board increase. The parties agreed to another 2.7% bringing the total increase in pay for Casper's fire fighters to 5.5% since the across-the-board increase compounds on top of the FLSA adjustment.

These examples demonstrate that local government can readily absorb the cost of complying with the FLSA and, where necessary, this cost will be taken into consideration in future collective bargaining regarding wage increases.

C. The Overtime Premium May Be Costly to Some Public Employers Who Have Fire Fighters Work Extended Hours

The only public employers who may encounter significant costs are those who pay no premium now for overtime work, no matter how that overtime is currently defined. In effect, they haven't yet recognized the concept of overtime at all.

These employers fall into two categories.

First, there are the cities who pay straight time pay for all hours worked no matter how outrageously large that number may be. For example, there are a number of fire departments that claim to have a work schedule that averages 56 hours per week. In reality, however, they routinely schedule fire fighters to work an extra shift every week or every other week on a straight-time pay basis. This is called "scheduled" or "voluntary" overtime as opposed to emergency or unscheduled overtime. In effect, then, the fire fighters are scheduled to work an average of 68 or 80 hours a week, not 56, and there is no real overtime.

This gimmick produces tremendous savings for these cities, but causes fire fighters to work an inordinate number of hours. It actually costs the cities less to work the fire fighters on "overtime" than their regular hours. For instance, the cities make no pension contribution for these so-called overtime hours.

Obviously this practice holds down hiring. Cities find it cheaper to schedule fire fighters to work as much overtime as possible rather than hire additional workers.

Cities who engage in this practice are doing precisely what the FLSA was intended to prevent when it was enacted in 1938. The IAFF not only believes this practice is contrary to the intent of the FLSA but that it is unsafe for fire fighters to routinely work so many hours on a regular, long-term basis.

The only reason the adoption of the FLSA standard may be costly to cities who follow this practice is that they have never recognized the principle that overtime work, no matter how defined, justifies some form of a premium. The issue confronting these cities is not the overtime standard, but rather the notion of a premium for working overtime. Yet, absent a premium, the definition of overtime is meaningless.

Their problem is that they are understaffed and wish to remain that way. The application of the FLSA will force them to reconsider that practice, as it was originally designed to do.

The second category includes municipalities that pay for overtime on a straight-time basis but give it in the form of compensatory time off rather than money. This practice is not quite as detrimental to the best interests of fire fighters, since -- if fire fighters are, in fact, given the opportunity to use compensatory time -- they are not required to work an inordinate number of hours on a regular basis. However, this practice in unfair. It does not recognize that overtime work is an inconvenience to the worker, interferes with family and social

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obligations, and is tiring. It does not acknowledge that overtime inherently implies a premium for working it.

Oftentimes, too, fire fighters never get an opportunity to use the compensatory time that has been built up. Accumulated leave time creates a future liability for a city. That liability is better paid in the year in which it is incurred.

To the extent some fire departments have adhered to this practice and have not recognized the concept of a premium payment for overtime worked, even if paid in compensatory time off, they may incur higher costs than those cities that have adopted the standard procedure of premium pay for overtime. However, this cost does not grow out of the application of the FLSA to public sector fire fighters, but rather should be attributed to their own mistake of not following generally accepted practices.

D. Compensatory Time Off vs. Pay

Section 7(k) of the FLSA clearly prescribes that premium pay be paid fire fighters for all hours worked over 53 hours a week or 212 hours over a 28-day period. There appear to be only two exceptions. First, it is acceptable if the compensatory time off is taken within the same work period in which it is earned. Second, it is permissible, for those fire departments whose regular hours are less than 212 over a 28-day period to use compensatory time off for those overtime hours between the lesser number and 212.

The question has been raised whether further exceptions should be granted. The IAFF concedes there may be instances when compensatory time-off may be an appropriate substitute for pay. The current flare up of forest fires in the Western states may present a

situation where compensatory time off may be a fully or partially acceptable response. If necessary, however, there is sufficient latitude in the law, particularly with respect to Section 7(k), to allow regulations of the Department of Labor to be developed to address this issue in an appropriate way. It does not require an amendment to the law.

In any case, it is the IAFF's position that the principle of premium pay for overtime worked must not be undermined by any exceptions. That is, if compensatory time off is to be considered an acceptable payment under properly defined circumstances, it must be accrued on a premium not on a straight-time basis.

Conclusion

The application of the FLSA to the nation's public sector fire departments will only involve a marginal cost. It will not be catastrophic as urged by some public officials. In the overwhelming majority of communities that pay a premium for overtime work, even if overtime does not become effective until more hours are worked than specified by the FLSA, the added cost will not exceed 2 percent. Many fire departments are already in compliance and face no additional costs.

Only those few municipalities that have avoided the fundamental principle of premium pay for overtime work will potentially be confronted with appreciable cost increases. There is no reason to exempt all public employers from the law because a few may be faced with sizeable costs caused by their own decision to work their employees for excessively long hours. Had they followed the standard practice of most city fire departments, they would not

now be complaining so loudly about the perceived adverse impact of FLSA. Contrary to the long-established purposes of the FLSA, these communities have worked their fire fighters for inordinately long hours at a straight-time rate, instead of hiring additional personnel to provide the level of fire protection service required by the public interest. It is time they were brought into the mainstream under the impetus of the FLSA.

In sum, we respectfully submit that there is no need to amend or delay the full application of the FLSA to public employers and their fire fighters. We are confident that experience will show that public employers will be able to comply with the FLSA despite their unfounded predictions of financial doom, as other employers have been able to do when they too were incorporated under the statute. Indeed, any minimal burden created by the FLSA on some cities will encourage them to reduce the hours of work and to hire additional persons -- a result which is precisely consistent with the overall purposes of the statute. The law was well named in 1938 -- the Fair Labor Standards Act -- and we believe these same fair labor standards should have equal application to public sector employees as it has had for private sector employees. In the 1974 Amendments, Congress voted overwhelmingly to include virtually all public employees within the protective coverage of the FLSA, and the law as it stands now should be given a fair chance to work.

Mr. MURPHY. Mr. Sweeney.

Mr. SWEENEY. Thank you, Mr. Chairman, members of the subcommittee.

I am happy to have the opportunity today to share our views on the coverage of State and local workers by the Fair Labor Standards Act. Service Employees International Union represents 850,000 workers, and more than half work for State and local governments and school districts.

The Fair Labor Standards Act is probably the most far reaching piece of social legislation, as you all know, that has ever been adopted in our country.

Over the years, its coverage has increased to virtually all workers except State and local government employees. Even Federal workers have now been protected by the FLSA for more than a decade.

We applaud the Supreme Court's decision to finally extend FLSA protections to State and local workers. This is a landmark ruling that grants public sector workers basic rights to decent wages and hours of work.

This decision means simply that State and local workers will no longer be second class members of the labor force. Some public managers point to the *Garcia* decision as one of the greatest threats to the continued fiscal and political viability of cities and counties that this Nation currently faces in an attempt to secure congressional relief.

This is utter nonsense designed to confuse Members of Congress and our members. Perhaps most disturbing in all this confusing talk is the absence of any reference to equity or fairness.

Our members stand squarely behind the principle that public sector workers deserve the same fair labor standards afforded to other workers. We have submitted testimony to the subcommittee, and I would just like to briefly conclude with two points.

First, we oppose any exemptions as to the FLSA because these exemptions violate the basic principles of time and a half for long hours of work. Whatever form it takes, SEIU believes that the principle of premium pay for overtime work must not be undermined in any circumstance, even a collective bargaining agreement.

Second, we oppose any further delay in the enforcement of the act beyond October 15, 1985. The law has already been in effect for public employers for at least 9 months. Many public employers have now complied with the act in good faith. Others are delaying. These employers would not be rewarded for their gambling.

Moreover, we expect that compliance will go much more smoothly than the cities and the counties are predicting.

If, for some reason, they do not, actual experience will be the best guide by which Congress can examine factual problems and move to correct real rather than imagined difficulties.

In short, a legislative exemption would be a giant step backward for public service workers. In the present political climate with public employers pressing for exemptions, we cannot support legislation amending the FLSA.

Such a move at this time would undoubtedly weaken protection for all workers, both public and private. There is also no need to

delay the full applications of the FLSA to public employers. The law should be given a chance to work.

In the interim, we will work with the Congress to address any areas of real concern. The real cause of any fiscal problems of the State and local levels is the cutbacks in Federal aid.

Thank you.

[The prepared statement of John Sweeney follows:]

Prepared Statement of John J. Sweeney, International President, Service Employees International Union, AFL-CIO, CLC

THANK YOU MR. CHAIRMAN FOR THE OPPORTUNITY TODAY TO SHARE OUR VIEWS ON THE COVERAGE OF STATE AND LOCAL WORKERS BY THE FAIR LABOR STANDARDS ACT. THE SERVICE EMPLOYEES INTERNATIONAL UNION REPRESENTS 525,000 PUBLIC EMPLOYEES WHO WORK FOR STATE AND LOCAL GOVERNMENTS AND SCHOOL DISTRICTS.

THE FAIR LABOR STANDARDS ACT (FLSA) IS PROBABLY THE MOST FAR-REACHING PIECE OF SOCIAL LEGISLATION EVER ADOPTED IN THE UNITED STATES. IT EXPRESSED CONGRESS' INTENT TO ENSURE "THE MAINTENANCE OF THE MINIMUM STANDARD OF LIVING NECESSARY FOR HEALTH, EFFICIENCY AND GENERAL WELL-BEING OF WORKERS. . ." ORIGINALLY, THE FLSA COVERED ONLY ABOUT ONE-THIRD OF THE NON-SUPERVISORY WORKFORCE. OVER THE YEARS, ITS' COVERAGE HAS INCREASED TO VIRTUALLY ALL WORKERS, EXCEPT STATE AND LOCAL GOVERNMENT EMPLOYEES. EVEN FEDERAL WORKERS HAVE NOW BEEN PROTECTED BY THE FLSA FOR MORE THAN A DECADE.

WE APPLAUD THE SUPREME COURT'S DECISION TO FINALLY EXTEND FLSA PROTECTIONS TO STATE AND LOCAL WORKERS. THIS IS A LANDMARK RULING THAT GRANTS PUBLIC SECTOR WORKERS BASIC RIGHTS TO DECENT WAGES AND HOURS OF WORK. THIS DECISION MEANS SIMPLY THAT STATE AND LOCAL WORKERS WILL NO LONGER BE "SECOND CLASS" MEMBERS OF THE LABOR FORCE.

SOME PUBLIC MANAGERS POINT TO THE GARCIA DECISION AS ONE OF THE GREATEST THREATS TO THE CONTINUED FISCAL AND POLITICAL VIABILITY OF CITIES AND COUNTIES THAT THIS NATION CURRENTLY FACES IN AN ATTEMPT TO SECURE CONGRESSIONAL RELIEF. THIS IS UTTER NONSENSE--DESIGNED TO CONFUSE MEMBERS OF CONGRESS AND OUR WORKERS.

PERHAPS MOST DISTURBING IN ALL THIS CONFUSING TALK IS THE ABSENCE OF ANY REFERENCE TO EQUITY OR FAIRNESS. YET, OUR MEMBERS STAND SQUARELY BEHIND THE PRINCIPLE THAT PUBLIC SECTOR WORKERS DESERVE THE SAME "FAIR LABOR STANDARDS" AFFORDED TO OTHER WORKERS. NO WORKER SHOULD BE ASKED TO WORK LONG HOURS FOR LOW PAY IN ORDER TO SUBSIDIZE ANY EMPLOYER, WHETHER THAT EMPLOYER IS ENGAGED IN PRIVATE BUSINESS OR IN GOVERNMENT BUSINESS. IN FACT, MANY OF OUR WORKERS NOW FIND THEMSELVES WORKING SIDE-BY-SIDE WITH PRIVATE CONTRACT EMPLOYEES WHO ENJOY THESE BASIC BENEFITS.

UNFORTUNATELY, MANY PUBLIC MANAGERS TRY TO DIVIDE OUR WORKERS FURTHER WITH FALSE CLAIMS OF FINANCIAL RUIN, MASSIVE LAYOFFS, AND NO MORE FLEXITIME. IN THE SAME BREATH, THEY ALLUDE TO THE VIRTUES OF PUBLIC SECTOR MANAGEMENT AND COLLECTIVE BARGAINING AS SUFFICIENT TO PROTECT THE INTERESTS OF PUBLIC EMPLOYEES. HOWEVER, CAREFUL SCRUTINY REVEALS THAT THE FLSA WILL CREATE NEITHER FINANCIAL NIGHTMARES NOR JEOPARDIZE THE PUBLIC SAFETY NOR ELIMINATE FLEXIBLE SCHEDULING.

FOR EXAMPLE, STATE AND LOCAL GOVERNMENT CLAIMS THAT FLSA COVERAGE WILL THRUST THEM INTO FISCAL BANKRUPTCY--COSTING UPWARDS OF $3-$4 BILLION A YEAR AND PRODUCING MASSIVE LAYOFFS AND TAX HIKES--ARE GROSSLY EXAGGERATED.

A NATIONWIDE SEIU SURVEY OF STATE AND LOCAL EMPLOYEES PUTS THE ANNUAL COST IMPACT AT $210-$300 MILLION. AT MOST, THIS EQUALS .16 OF ONE PERCENT OF THE NEARLY $200 BILLION PUBLIC SECTOR WAGE BILL. THESE RESULTS COMPARE FAVORABLY WITH THOSE OF A 1971 LABOR DEPARTMENT SURVEY WHICH PUT THE COST OF COVERING STATE AND LOCAL WORKERS BY A 40-HOUR OVERTIME STANDARD AT LESS THAN ONE PERCENT OF WEEKLY WAGES. (SEE ATTACHED SUMMARY OF THE STUDY RESULTS.)

A RECENT ANALYSIS OF THE COST OF COMPLIANCE FOR STATE GOVERNMENTS BY THE NATIONAL ASSOCIATION OF STATE PERSONNEL EXECUTIVES CONFIRMED THAT THE COSTS COULD WELL BE UNDER ONE PERCENT OF THEIR WAGE BILL. SEIU'S STUDY ALSO FOUND THAT MOST STATE GOVERNMENTS (42) WERE IN COMPLIANCE, OR NEARLY SO.

SO WHY THE DISCREPANCIES BETWEEN THESE AND MOST PUBLIC EMPLOYER BUDGET CLAIMS? FIRST OF ALL, THEY HAVE YET TO PRODUCE A VALID SURVEY OR BACK-UP FOR THEIR CALCULATIONS. ALSO, THE BULK OF THE COSTS TEND TO INVOLVE CONVERTING COMPENSATION TIME INTO CASH. MANY CITIES AND COUNTIES INCLUDE COMPENSATORY TIME LIABILITIES IN THIS COUNT THAT ARE NOT OBLIGATED BY THE FLSA. NEW YORK CITY'S ESTIMATES, FOR EXAMPLE, INCLUDE COMPENSATION TIME EARNED BY WHITE COLLAR EMPLOYEES FOR ALL HOURS WORKED ABOVE 35 HOURS A WEEK, MOST OF WHICH IS A LIABILITY BEYOND FLSA.

IN ADDITION, THE ACCOUNTING USED IN THESE BUDGET ESTIMATES TREATS COMPENSATION TIME AS COSTLESS--EVEN THOUGH IT IS A DEFERRED LIABILITY THAT IS GENERALLY PAID OUT AT TIME AND A HALF RATES OVER THE SAME FISCAL YEAR. WE KNOW THIS IS THE CASE FOR MANY OF OUR CONTRACTS WHICH ALLOW EMPLOYEES TO BANK TIME, BUT WHICH SET A MAXIMUM ON THE NUMBER OF HOURS IN THE BANK OR ON THE TIME FOR EMPTYING THE BANK. THE TIME LIMIT IS THE MOST FREQUENT PROVISION AND IS GENERALLY SIX MONTHS OR LESS.

AND BESIDES, IGNORED IN ALL OF THE ARITHMETIC ABOUT "HIGH" OVERTIME COSTS IS THE EMPLOYER'S FLEXIBILITY TO CHANGE WORK SCHEDULES TO AVOID MOST OVERTIME PENALTIES. WORK PATTERNS ARE NOT FROZEN. WHEN MANY OF OUR CONTRACTS WERE RENEGOTIATED THIS SUMMER, THE OVERWHELMING RESPONSE WHERE WORK SHIFTS CONFLICTED WITH THE FLSA WAS TO MODIFY--NOT KEEP INTACT--THOSE SCHEDULES AND TO REDUCE HOURS WORKED TO MINIMIZE THE NEW OVERTIME PAYMENTS.

SOME PUBLIC EMPLOYERS ARE ALSO BUSY SPREADING THE RUMOR THAT FLEXITIME IS ILLEGAL UNDER THE FLSA. THIS MISINFORMATION IS DESIGNED TO CONFUSE OUR WORKERS, MANY OF WHOM ENJOY FLEXITIME AS A WAY TO REDUCE COMMUTING TIME AND TO INCREASE FAMILY TIME. YET, NOWHERE DOES THE FLSA REQUIRE TRADITIONAL 9 TO 5 DAYS. TO THE CONTRARY, THE MOST COMMON FLEXITIME, WHERE EMPLOYEES WORK "CORE HOURS," BUT ARE ALLOWED TO COME IN AND LEAVE EARLY OR LATE, IS NOT TOUCHED. NOR DOES THE FLSA AFFECT THE FOUR DAY 10-HOUR SCHEDULE WITH ONE DAY OFF, OR FOR THAT MATTER ANY OTHER ARRANGEMENT AROUND THE 40 HOUR WORKWEEK.

OUR LOCALS, WORKING TOGETHER WITH MANAGEMENT, ARE DEVISING NEW SCHEDULES TO MESH WITH THE FLSA REQUIREMENTS, WHERE THOSE FEW PROBLEMS ARISE. FOR EXAMPLE, SEIU LOCAL 250 WORKED WITH FRESNO COUNTY TO SWITCH FROM A "9-80" SCHEDULE (9 9-HOUR DAYS, ONE FLEX DAY) TO A "4-10" HOUR SCHEDULE FOLLOWED BY 5 8-HOUR DAYS, WHICH ALSO GIVES ONE FLEX DAY OFF. SOME DEPARTMENTS HAVE EVEN WORKED OUT A NEW 14-DAY SCHEDULE THAT GIVES THEM MORE--ONE AND A HALF FLEX DAYS OFF.

WE RECOGNIZE THAT COMPENSATION TIME IS WIDESPREAD AMONG SOME PUBLIC SECTOR WORKERS. OVER 40 PERCENT OF OUR PUBLIC SECTOR CONTRACTS COVERING 62 PERCENT OF OUR PUBLIC SECTOR WORKERS CALL FOR COMPENSATION TIME AT TIME AND A HALF RATES AT THE EMPLOYEE'S OPTION. OVERALL, WE ESTIMATE THAT ABOUT 40 PERCENT OF ALL OVERTIME HOURS FOR SEIU STATE AND LOCAL EMPLOYEES ARE REIMBURSED IN COMPENSATION TIME.

BESIDES FLEXITIME, OTHER CREATIVE SOLUTIONS ARE IN THE WORKS TO PARTLY DEAL WITH TIME OFF. SEIU LOCAL 150 WORKED OUT AN ARRANGEMENT WITH MARATHON CITY, WISCONSIN BY WHICH EMPLOYEES CAN MAKE VOLUNTARY TRADES IN SCHEDULED SHIFTS WITHIN A 14-DAY PAY PERIOD. LOCAL 285 IN BOSTON IS LOOKING AT A PLAN TO ALLOW TIME OFF WITHIN THE SAME PAY PERIOD. SEVERAL SEIU LOCALS HAVE NEGOTIATED LIBERAL LEAVE POLICIES THAT ALLOW EMPLOYEES TO ELECT LEAVE WITHOUT PAY DURING THE YEAR, BASED ON THE TOTAL OVERTIME HOURS EARNED. THIS POLICY HELPS WORKERS WHO PREFER LONGER VACATIONS.

CONGRESS ALREADY EXPRESSED SPECIAL CONCERN FOR THE FINANCIAL BURDENS AND THE 24-HOUR SCHEDULING NEEDS OF POLICE AND FIRE DEPARTMENTS. THE 1974 AMENDMENTS ESTABLISHED HIGHER OVERTIME STANDARDS AND ENTIRELY EXEMPTED SMALLER PUBLIC SAFETY AGENCIES. THESE SPECIAL STANDARDS ALSO PROVIDE POLICE AND FIREFIGHTERS ADDED ROOM TO KEEP COMPENSATORY TIME.

FOR EXAMPLE, MOST POLICE CONTRACTS CALL FOR OVERTIME AFTER 40 HOURS, WELL BELOW THE 43 HOURS A WEEK ALLOWED UNDER THE FLSA. THIS MEANS THAT POLICE HAVE AT LEAST AN EXTRA 11 HOURS OF OVERTIME MONTHLY TO STORE AS COMPENSATION

TIME, OR TAKE IN ANY OTHER MANNER, BEFORE THE FLSA OVERTIME CLOCK STARTS. AND THE REALITY IS THAT PUBLIC SAFETY WORKERS CAN PROBABLY EARN LOTS MORE COMPENSATION TIME MONTHLY BECAUSE HOLIDAYS, SICK LEAVE, ETC. DO NOT COUNT AS HOURS WORKED UNDER THE FLSA TOWARDS EARNING OVERTIME, BUT DO COUNT UNDER MOST CONTRACTS.

IT'S STRANGE THAT CITY AND COUNTY OFFICIALS NEGLECT TO MENTION THESE DIFFERENT WAYS TO COMPLY WITH THE FLSA IN THEIR TESTIMONY. THE ONLY CONCLUSION IS THAT THESE PUBLIC EMPLOYERS WANT TO PORTRAY THE FLSA AS A "GREAT DEPRESSION LAW"--ONE THAT IS TOO RIGID FOR MODERN TIMES--IN ORDER TO ESCAPE FROM UNDER THE SUPREME COURT'S RULING.

AND IN FACT, CERTAIN MANAGERS' DELIBERATE OVERREACTIONS TO THE FLSA DO A GREAT DISSERVICE BY REINFORCING THIS OUT-OF-STEP IMAGE. MICHIGAN, FOR EXAMPLE, ATTEMPTED TO ELIMINATE ALL FLEXITIME FOR THEIR EMPLOYEES. GEORGIA TRIED TO PREVENT ITS EMPLOYEES FROM EATING AT THEIR DESKS DURING MEALTIMES IN THE NAME OF "GARCIA".

D.C. SUPERVISORS PULLED DETECTIVES OFF A MURDER INVESTIGATION AFTER THEIR SHIFT, DESPITE THE FACT THAT THESE OFFICERS WOULD NOT ACCRUE PREMIUM OVERTIME PAY UNTIL 171 HOURS OR MORE WERE WORKED. AND DESPITE THE FACT THAT THESE WORKERS WOULD HAVE GOTTEN TIME AND ONE-HALF IN ANY CASE.

THE THIRD TACTIC TAKEN BY PUBLIC EMPLOYERS TO SECURE AN EXEMPTION FROM FLSA OBLIGATIONS IS TO POINT TO ATTRACTIVE NEGOTIATED BENEFITS AS EVIDENCE THAT APPLYING THE FLSA TO THE PUBLIC SECTOR IS UNNECESSARY. THEY'VE FINALLY GOTTEN RELIGION, BUT FOR THE WRONG REASONS.

ON BALANCE, SEIU LOCALS HAVE NEGOTIATED STRONG OVERTIME PROVISIONS WHICH EXCEED THE MINIMUM FLSA STANDARDS. WE ARE PROUD OF THESE CONTRACTS AND BELIEVE THAT IT IS THE FRUIT OF OUR LONG STRUGGLES OVER THE YEARS TO BRING PUBLIC SECTOR WORKERS UP TO "FIRST CLASS" CITIZENSHIP.

BUT UNFORTUNATELY, THE "TYPICAL" PUBLIC EMPLOYEE IS NOT COVERED BY A COLLECTIVE BARGAINING CONTRACT. NEARLY 70% OF STATE AND LOCAL WORKERS, EXCLUDING TEACHERS, OR 6.4 MILLION WORKERS, REMAIN UNORGANIZED. MANY OF THESE WORKERS HAVE YET TO ACHIEVE EVEN THE MOST BASIC RIGHTS--THE RIGHT TO JOIN A UNION AND TO NEGOTIATE REGARDING THEIR WAGES, HOURS, AND WORKING CONDITIONS. ANOTHER BASIC RIGHT DENIED SOME OF THEM IS THAT OF "FAIR AND FULL" COMPENSATION FOR LONG HOURS AT WORK, AT LEAST EQUAL TO THAT WHICH PRIVATE SECTOR WORKERS ENJOY.

FOR EXAMPLE, IN GEORGIA WHERE THERE IS NO COLLECTIVE BARGAINING, SOME STATE POLICE WHO WERE REQUIRED TO WORK 250 HOURS OR MORE A MONTH WITH ONLY TWO DAYS OFF NOW RECEIVE PREMIUM PAY. GEORGIA HOSPITAL DIETARY WORKERS WHO WERE PREVIOUSLY FORCED TO WORK CRAZY SCHEDULES--59 HOURS IN ONE WEEK FOLLOWED BY 21 HOURS THE NEXT--NOW WORK THE NORMAL 40-HOUR WEEK WITH NO ADVERSE EFFECT ON SERVICES. EMPLOYEES IN TEXAS WHO WORKED "VOLUNTARY" 56-72 HOUR SCHEDULED WORKWEEKS AT STRAIGHT-TIME PAY SEE BOTH NEW OVERTIME BENEFITS AND REDUCTIONS IN HOURS AS CONTEMPLATED BY THE LAW.

NEVERTHELESS, THE QUESTION ARISES AS TO WHETHER FURTHER EXCEPTIONS, OR DELAYS, SHOULD BE GRANTED. ALONG THIS LINE, A NUMBER OF BILLS HAVE BEEN INTRODUCED TO PROVIDE RELIEF TO STATE AND LOCAL GOVERNMENTS. MOST BILLS CALL FOR EXEMPTIONS--RANGING FROM A COMPLETE MINIMUM WAGE AND OVERTIME EXEMPTION FOR ALL STATE AND LOCAL GOVERNMENT ENTITIES TO OVERTIME EXEMPTIONS

FOR POLICE AND FIREFIGHTERS. SEVERAL BILLS ALLOW COMPENSATION TIME OFF AT STRAIGHT-TIME IN LIEU OF PAID OVERTIME FOR ALL WORKERS--PUBLIC AND PRIVATE--OR JUST FOR PUBLIC SAFETY. SEIU CANNOT SUPPORT ANY OF THESE BILLS.

FIRST, WE OPPOSE ANY EXEMPTIONS TO THE FLSA, BECAUSE THESE EXEMPTIONS TAKE AWAY THE FLOOR NEEDED TO SUPPORT MINIMUM WAGE AND HOUR RIGHTS FOR ALL PUBLIC SECTOR WORKERS AND THUS VIOLATE THE BASIC PRINCIPLE OF TIME AND A HALF FOR LONG HOURS OF WORK. WHATEVER FORM IT TAKES, SEIU BELIEVES THAT THE PRINCIPLE OF PREMIUM PAY FOR OVERTIME WORKED MUST NOT BE UNDERMINED IN ANY CIRCUMSTANCES, EVEN A COLLECTIVE BARGAINING AGREEMENT.

IN ADDITION, WE BELIEVE THAT THE FLSA IS VERY FLEXIBLE AND THUS GENERALLY COMPATIBLE WITH THE PERSONNEL SYSTEMS THAT HAVE GROWN UP IN THE PUBLIC SECTOR OVER THE YEARS. THUS, GOOD PUBLIC POLICY DEMANDS THAT CONGRESS DEAL WITH ANY SPECIFIC PROBLEMS DIRECTLY, JUST AS THEY DID IN 1974, RATHER THAN LEGISLATE SWEEPING EXEMPTIONS. SUCH AN APPROACH WOULD PROVIDE AN INCENTIVE TO MANAGEMENT TO GET OFF THE EXEMPTION "BANDWAGON" AND DEAL STRAIGHT TO SOLVE ANY LEGITIMATE CONCERNS FACING STATE AND LOCAL GOVERNMENTS. THE MERE FACT THAT IT WILL COST SOME MONEY IS NOT ONE OF THE LEGITIMATE DEFENSES--ASK ANY PRIVATE BUSINESS.

SECONDLY, WE OPPOSE ANY FURTHER DELAY IN THE ENFORCEMENT OF THE ACT BEYOND OCTOBER 15, 1985. AFTER ALL, THE CURRENT ENFORCEMENT DELAY DOES NOT TAKE AWAY THE RESPONSIBILITY OF EMPLOYERS TO MEET THE ACT. THE LAW HAS ALREADY BEEN IN EFFECT FOR PUBLIC EMPLOYERS FOR AT LEAST NINE MONTHS. MANY PUBLIC EMPLOYERS WERE ALREADY IN FULL COMPLIANCE, AND OTHERS HAVE NOW COMPLIED WITH

THE ACT "IN GOOD FAITH". OTHERS ARE DELAYING. THESE EMPLOYERS SHOULD NOT BE REWARDED FOR THEIR "GAMBLING". MOREOVER, WE EXPECT THAT COMPLIANCE WILL GO MUCH MORE SMOOTHLY THAN THE CITIES AND COUNTIES ARE PREDICTING. IF FOR SOME REASONS THEY DO NOT, ACTUAL EXPERIENCE WILL BE THE BEST GUIDE BY WHICH CONGRESS CAN EXAMINE FACTUAL PROBLEMS AND MOVE TO CORRECT REAL RATHER THAN IMAGINED DIFFICULTIES.

THERE IS ALSO NO NEED FOR A DELAY TO STUDY THE ECONOMIC IMPACT PRIOR TO IMPLEMENTATION. ANY "ECONOMIC EFFECTS" OF EXTENDING FLSA PROTECTION TODAY WOULD BE LESS THAN IN 1974 BECAUSE PUBLIC EMPLOYEES WORK FEWER HOURS AND RECEIVE MORE PREMIUM PAY--THANKS TO COLLECTIVE BARGAINING. ALSO, THERE IS NO WAY TO CALCULATE THE TRUE IMPACTS UNTIL EMPLOYERS ADJUST THEIR WORK SCHEDULES TO REDUCE THE AMOUNT OF OVERTIME NOW BEING WORKED.

IN SHORT, A LEGISLATIVE EXEMPTION WOULD BE A GIANT STEP BACKWARDS FOR PUBLIC SECTOR WORKERS. THE FLSA PROVIDES THE FLOOR TO SUPPORT MINIMUM WAGE AND HOUR RIGHTS, WHICH PRIVATE SECTOR WORKERS HAVE LONG ENJOYED. IN THE PRESENT POLITICAL CLIMATE, WITH PUBLIC EMPLOYERS PRESSING FOR EXEMPTIONS, WE CANNOT SUPPORT LEGISLATION AMENDING THE FLSA. SUCH A MOVE <u>AT THIS TIME</u> WOULD UNDOUBTEDLY WEAKEN PROTECTIONS FOR ALL WORKERS, BOTH PUBLIC AND PRIVATE.

THERE IS ALSO NO NEED TO DELAY THE FULL APPLICATION OF THE FLSA TO PUBLIC EMPLOYERS. THE LAW SHOULD BE GIVEN A CHANCE TO WORK. CONTRARY TO THE CLAIMS OF THE FINANCIAL DOOMSAYERS, THE COST OF CORRECTING FLSA INEQUITIES WILL BE NEGLIGIBLE. NOR WILL THE FLSA TURN OUT TO BE AN INFLEXIBLE "9 TO 5"

LAW. IN THE INTERIM, WE WILL WORK WITH THE CONGRESS TO ADDRESS ANY AREAS OF REAL CONCERN. WE ALSO URGE THE DEPARTMENT OF LABOR TO MOVE QUICKLY TO CLARIFY CERTAIN ISSUES AFFECTING STATE AND LOCAL GOVERNMENTS AND WORKERS.

THE REAL CAUSE OF ANY FISCAL PROBLEMS AT THE STATE AND LOCAL LEVELS IS THE CUTBACKS IN FEDERAL AID BECAUSE OF THE REAGAN DEFICITS, NOT FLSA COVERAGE. WE DEEPLY RESENT THE ADMINISTRATION'S "THINLY VEILED" MOVES TO SELL-OUT WORKERS BY PROMISING STATE AND LOCAL GOVERNMENTS AN EXEMPTION FROM THE GARCIA RULING IN EXCHANGE FOR ELIMINATING STATE AND LOCAL TAX DEDUCTIBILITY.

TWO WRONGS DO NOT MAKE A RIGHT. OUR UNION--OUR MEMBERS--ARE ADAMENTLY OPPOSED TO BOTH PROPOSALS.

THANK YOU. I WOULD BE HAPPY TO ANSWER ANY QUESTIONS.

Mr. MURPHY. Thank you very much, Mr. Sweeney. I suggest separate and equal facilities for both gentlemen.

Mr. SWEENEY. I think if we are going to have a paradise, that is going to be necessary.

Mr. MURPHY. I might address this to all of you, but particularly to you Mr. Gotbaum. One thing you did say, the New York Labor Council has certainly taken care of its members with a 35-hour workweek for overtime computation.

You have driven a hard bargain up there. Now, you have been able to accomplish this without the benefit of the Fair Labor Standards Act because the usury decision prevailed until the *Garcia* decision in February of 1985, and I have to ask you if you have already entered into such agreements.

And I might say the *Garcia* decision interferes with the comp time concept in negotiations. You have lived with it since 1976, really, because actually the FLSA never took effect for municipal employees for any appreciable time.

So, you have lived without it. What makes you think that you now have to live with it?

Mr. GOTBAUM. As I stated——

Mr. MURPHY. Particularly address that insofar as comp time goes.

Mr. GOTBAUM. About all of it will remain intact. That is the funny thing about that. So, there is little or no problem in regard to this.

Mr. MURPHY. What do you do with comp time in excess of 40 hours a week?

Mr. GOTBAUM. Comp time in excess of 40 hours a week, if it is voluntary comp time, it is straight comp time.

If it is involuntary, it is time and a half cash or comp time.

The voluntary time is very small indeed——

Mr. MURPHY. Excuse me for interrupting, but don't you think your members, because of the *Garcia* decision, may be strongly enticed into no longer agreeing to comp time because they will want to hang it on the involuntary category and get the cash or time and a half comp?

Mr. GOTBAUM. That is a good question, but a managerial decision. I will say for this union we have been responsible in this regard.

We are one of the most important movers in the whole quality of worklife. We have gone into flex-time. We helped the city cut down on that.

So that, in terms of the negotiations, we have already established a good modus operandi with the city, no problem in regard to this.

Mr. MURPHY. Do you think *Garcia* will upset that in the way of the ability to negotiate those?

Mr. GOTBAUM. Absolutely not. But what you have to look at—and I ask you to look at it, I ask the subcommittee to look at it, and that is why I stated, and I am trying to get this point across, Mr. Chairman—that New York is not the problem, and I was amazed Mayor Koch showed up.

I would much rather be back in Brooklyn. In fact, I am assuming most of you would rather be back in Brooklyn—so that it was—the word I used, the mayor's word—"outrageous" for us to be here.

As part of the national union, however, and as part of a labor movement I am concerned about, I think it is probably closer to 70 percent of those employees who don't have our ability to bargain collectively, of those employees who need that law.

Now, this to me, is the major reason for it. The law is a necessity in terms of protecting those without collective bargaining rights. Ed, the mayor, and I, really shouldn't have been here.

I think this is stuff we will straighten out through collective bargaining, and I think my national union will agree with me. I am willing to make a quid pro quo. If you give collective bargaining rights to all of the local and State government in terms of the employees, we might trade in *Garcia* for that.

Mr. MURPHY. An interesting concept.

Mr. HAWKINS. Let me ask you, Mr. Gannon, my information comes from otherwise very reliable individuals who indicate that there is a difference in the situation of firefighters on the east cost as compared with the west coast. Is the association united in its position, or is there an actual difference?

I have been told that the firefighters on the west coast, particularly in the Los Angeles area, prefer the comp time rather than compensation for overtime.

Mr. GANNON. It varies across the country, Mr. Hawkins. But in most areas, especially in major cities like Los Angeles and New York, et cetera, they have collective bargaining agreements where they have ordered the comp time versus overtime in there, and we feel this is not going to affect that part of the comp time in those major cities with collective bargaining laws.

Mr. HAWKINS. If they already have what they want through contracts which will remain the same regardless of what Congress does, why are they so excited?

Mr. GANNON. Everyone is excited because—well, for 10 years now, the decision will make us almost first-class citizens.

We have been deprived of overtime, and they finally determined 212 hours of work in a 28-day cycle, which is a 53-hour workweek, is 13 hours more than the average worker in America, and it would give us the opportunity to at least have half-time pay after the 53 hours.

Mr. HAWKINS. Statements have been made that compliance with the act will result in tremendous costs. We have heard that this afternoon. Mayor Bradley tells me the city of Los Angeles would probably assume a cost somewhere betwen $70 and $80 million.

Now, why the difference? Who made these cost estimates? Have the estimates been confirmed or validated by any outside organization?

Mr. SCHAITBERGER. Mr. Hawkins, the problem with most of the employers' cost estimates is, first of all, they fail to fully explain the practices of the act, particularly as they pertain to public safety or uniform services.

They fail to mention, as in the case of Los Angeles City, where it currently is 56 hours, if they would determine their hourly rate by using the full 56-hour work schedule, divided into their weekly salary. Then they take half of that amount, which is half time, and would pay them only for 3 hours of half-time pay.

I think you will find——

Mr. HAWKINS. You are referring now to the firefighters?

Mr. SCHAITBERGER. I am referring to the firefighters.

What the cities are doing is suggesting they are going to pay time and a half, so they take the hourly rate and suggest they are going to pay, in the case of 56 hours, 3 hours of time and a half time 52 weeks.

In the real world of the application of this standard, that is not what will happen.

They will, first of all, use a 56-hour schedule to determine an hourly rate.

They then take the position you have been paid for your full regularly scheduled 56-hour workweek in your normal salary. Therefore, they will only compensate you for 3 half hours of overtime.

Then you have to go a step further and, as President Gannon mentioned in his statement, they fail to tell you that in at least 40 percent of the work periods, employees will take some form of leave, which breaks the cycle and will disallow them any form of FLSA overtime.

The fact of the matter is their figures are terribly overinflated and very misleading in the majority of cost estimates we have seen.

Mr. HAWKINS. Mayor Koch, stated that the police officers of his city—cops, as he called them—are on a 40-hours week. Now, I am not so sure that he was implying that they use 40 hours as a base or 43, which is permitted.

I am not so sure whether or not his calculation—did he use 43 or 40?

Mr. GOTBAUM. It is 40 hours, Congressman Hawkins, and they—I am sorry, I have to speak for them, although I disrepresent them——

Mr. HAWKINS. Is 40 the break point?

Mr. GOTBAUM. Forty is the break point.

Mr. MURPHY. In New York?

Mr. HAWKINS. In the act——

Mr. GOTBAUM. Forty is the break point.

Mr. SCHAITBERGER. In the act, 43 hours per week, which is the break point for police, and it is 53 for firefighters.

I would also, Mr. Hawkins, if I could—Mayor Koch, I think somewhat mislead the committee on the application of comp time choice for fire in particular.

He seemed to narrow in on the uniformed services. Currently, New York City firefighters work a 42-hour work week. There is nothing in the act to prohibit those firefighters from continuing their current practice of accepting comp time between 42 hours and 53 hours. In the city of New York, you would have to have a firefighter working in excess of 12 hours of time in that particular week or in the case of a 28-day cycle, which is more likely, would have to work in excess of 48 hours before the FLSA would trigger in and be effective at all.

Mr. HAWKINS. In other words, what you are really saying is that the figures we have been furnished by at least two cities, New York and Los Angeles, represent the most extreme cases without taking into account flexibility which is permitted under the act.

Mr. GOTBAUM. That is the problem we have here, and that is where the mayor came up with a figure of $40 million, even though it is four-tenths of 1 percent.

There is no substantiation of that. What I know of the police and the fire, my brother is exactly right. There is little, almost no change, in cost, so the thing just shocks me.

They come up with a figure of $40 million, and I think Congressman Murphy's question—please show us how it is done—I would like to see it myself. Nobody has seen it.

Mr. HAWKINS. Could we, Mr. Chairman, request in these instances, where these cost figures have been submitted to the committee, that the providers also furnished the break out of just how they arrived at those costs. That seems to be the main bone of contention. If the costs are artificially inflated, obviously that would make a different situation. It seems to me, that the costs are not as large as has been suggested.

I would suggest we ask for the actual specifics of how they arrived at these costs.

Mr. MURPHY. Thank you, Mr. Chairman. I will instruct staff immediately. Each correspondence we get or testimony we take from the municipal units of government, we will ask them to provide us detailed information in view of those sections of the act you mentioned.

Mr. HAWKINS. Thank you.

Mr. MURPHY. Mr. Petri.

Mr. PETRI. Thank you, Mr. Chairman. I forgot to ask unanimous consent to put my full opening statement in the record.

Mr. MURPHY. Without objection, it will be submitted.

[Opening statement of Hon. Thomas E. Petri follows:]

OPENING STATEMENT OF HON. THOMAS E. PETRI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. Chairman, I welcome today's hearing on the Fair Labor Standards Act in the wake of the Supreme Court's decision in *Garcia* v. *San Antonio Metropolitan Transit Authority*. Like other Members of Congress, I've heard a lot about this decision and its imact on the people of my district and state. There, both employers and employees alike are concerned by the costs and restrictions that will result from bringing state and local employees under the coverage of the Fair Labor Standards Act.

This concern goes completely across the political spectrum. It is not a partisan issue at all. For example, the Major of Madison, Wisconsin, the Honorable Joseph Sensenbrenner—a liberal's liberal I think it is fair to say—has written urging me to support modification or repeal of the decision. Indeed, most of the union people I've talked to in my state oppose the decision. Most of the public employees in Wisconsin are unionized, and they have collectively bargained for their current contracts. They could have bargained for overtime pay at time and a half, but they did not, and probably with good reason. Many members apparently enjoy the flexibility afforded by comp time, and they realize that they wouldn't get much overtime pay even if they bargained for it, because their employers would go to great lengths to avoid those extra costs.

There has been testimony in the other body that implementation of the *Garcia* decision will cost state and local governments 4 to 6 billion dollars. But that, I assume, is the cost if current employment practices continue. Actually, what will happen instead is that they will lay off employees, cut services, and rearrange schedules in order to avoid these costs. So things won't be better for local governments or taxpayers, or for labor either. They'll be worse, and most of the people on the local level realize it.

I note that, among other officials, we will be hearing testimony on these matters today from the county executive of my home county of Fond du Lac, Anita Ander-

egg. I want to welcome her here, and I will be looking forward especially to hearing her views.

I note also that we will be hearing from various representatives of organized labor. I am not sure that the testimony we are to hear from those labor leaders invited here today will adequately reflect the great diversity of views on this issue that I know exists within the labor movement. I will be especially interested to find out to what extent they have polled their membership to determine their members' views on these matters.

Regardless of one's opinion of the *Garcia* decision, I think everyone would agree that it will have a substantial impact on state and local governments and their employees in both constitutional and practical terms.

We are charged with taking a hard look at this impact; not just as representatives or members of this subcommittee, but by the Court's decision itself.

Underlying this decision is the belief that Congress, rather than the courts, should decide the limits of a largely unfettered federal power to regulate commerce. While this reasoning is highly debatable, our obligation to address this issue remains.

As you know, the issue is a pressing one. On October 15, the Department of Labor will begin enforcing the *Garcia* decision for occupations affected by it. If Congress is to act, and I believe it should, we must do so prior to this deadline.

I hope that we will be able to listen to today's testimony and then proceed in the next few days to the drafting of legislation to at least postpone if not remedy the impact of Garcia. As one with a good deal of experience in state and local affairs, Mr. Chairman, I know you are acutely aware of the practical impact this decision will have on states, cities, and towns. I hope we can work together and with other interested parties to reach a reasonable resolution to this problem.

Mr. PETRI. Who, among your membership in New York, will be helped if the *Garcia* decision goes into effect and how?

Mr. GOTBAUM. That is a good question because I think very little will be helped. I think what we have in New York City is almost a no-cost item, that those who will be helped, we think, are those who have been kind of coerced into what we call voluntary overtime, and that is very, very small indeed, Congressman Petri, very, very small.

So that we don't know where the cost figures come, and as I stated, I wouldn't even be here if not for the surprise to me that Mayor Koch was testifying.

Mr. PETRI. In light of that, do you have any particular feelings about Congress delaying the imposition of the *Garcia* decision to determine whether, since it has no particular effect in New York, it might have effects around the rest of the country, and if so, what they would be and who it would help or hurt?

Mr. GOTBAUM. For myself, I would like to say it would be very nice, you know, for me to be charming and state to you why not delay it. But in this case, it is just delayed much, much too long.

There is no rationale. The numbers do not indicate it. If their figures are correct, nationwide, you are talking three-tenths of 1 percent, not 2 percent, even in New York.

If the mayor's figures are correct, you are talking about four-tenths of a percent with various negotiated contracts of 6 and 7 percent, so there is really no necessity for it.

Do you want to answer?

Mr. SWEENEY. Why should workers be penalized or discriminated against as far as the protections of the act, just because they have organized and because they have accomplished collective bargaining?

All public workers are entitled to the same kinds of rights under the act as private sector workers, and for State and local workers to be excluded from the act when we have Federal employees in-

cluded under the act, is a strong enough justification to have inclusion for all public workers.

It is interesting to note the two mayors who have been cited here today are mayors who have real strong collective bargaining relationships in their respective cities, who have bantered about millions and millions of dollars without supplying the subcommittee with any kind of documentation.

This is the first we are hearing of these numbers. To our kowledge, there are no surveys. There is no documentation, and I don't know what they are going to come up with when you ask them for it.

They are basing their information on assumptions we think are erroneous and that are certainly not applicable to their own situations because they are already covered under collective bargaining.

Mr. HAWKINS. Could I just follow up on a question?

Mr. PETRI. Sure.

Mr. HAWKINS. Mayor Bradley tells me that if he has to assume the cost of complying with the *Garcia* decision for the city of Los Angles, he will have to lay off policemen. God knows we need more policemen in my district and throughout the city. So that is a frightening prospect. That is what we are being told.

Now, is that a possibility that they will lay off firefighters and policemen if they must assume these costs?

Keep in mind they are also telling us they cannot assume the cost otherwise. They are up against budget limitations in many instances.

Mr. SWEENEY. I am not completely familiar with the provisions of the police officers' contract in Los Angeles, but I think probably the response that Jack Gannon of the firefighters gave on the Los Angeles firefighters might be similar for the police in Los Angeles.

I think these public managers are not facing up to their responsibilities as managers and employers.

There should be an ability to handle these kinds of provisions the same as private sector employers do and the same as public sector in the Federal Government do.

Mr. PETRI. I don't want to take a lot of time with this. Maybe I shouldn't raise it, but I would like to express a little uneasiness about it and give you a chance to respond some more to it.

I think you all raised the point, and it kind of underlines your testimony, and it is an appealing one, that State and local employees should not be second-class citizens.

The same principles should apply to them as to all other workers, and the same protections the Commerce Act extends to them; the principal public sector workers deserve the same protections as other workers.

Now, from whom? This is the Federal Government, and we surely have an obligation to extend some sort of guidelines and so on for Federal Government employees and to protect the general public all across the United States, including employees in the private sector.

I assume this is argued in the court case, and it is a question I would like to hear you respond on. Why shouldn't the State legislators, who are elected by the same people that elect us, have the re-

sponsibility within their States of setting the standards for State and local employees?

Why should we in Washington assume that particular responsibility? If it is private, it is a little different because those directors are not elected by their fellow citizens; they are investors.

But if it is public; they are all working for the public, the public gets to vote and set the conditions of employment.

They can appeal to their neighbors, and why should they have to come to Washington to appeal and be put in a straitjacket all across this whole continent?

Mr. SCHAITBERGER. Mr. Petri, the U.S. Congress in its wisdom has extended——

Mr. PETRI. I am asking you to explain to us why we should continue doing what we do before——

Mr. SCHAITBERGER. The same reason you found you should extend race and sex discrimination laws to apply to the public sector and not leave that up to State and local government decisions, the same reason the Congress has extended the protections under the Age Discrimination Act to the public sector some 6 years ago, and not leave that decision up to State and local government.

We believe there is a broad policy and national interest in providing fair labor standards for all workers, including public workers, which you have done in other laws for public sector workers.

Mr. GOTBAUM. I think the question transcends this particular issue, Congressman, and one we are terribly burdened with.

We find, for example, in New York State, if you have better working conditions and better pay, and that an equitable tax program in terms of giving kids a decent education, et cetera; much of our problem really hasn't been with Taiwan and Korea and even the Deep South.

Much of our problem has been with the areas, the regional areas around us. New Jersey is taking more jobs from us than others, so that we look for standards for honest competition, in a sense.

We look for decent standards so that intratrade, intracommerce, doesn't kill and stultify New York City.

I just add that to my brother's testimony.

Mr. MURPHY. We are also pleased to have with us the ranking minority member of the full committee, Mr. Jeffords.

Mr. JEFFORDS. Thank you, Mr. Chairman.

I would also like to make my statement part of the record at this point.

[Prepared statement of Hon. James M. Jeffords follows:]

PREPARED STATEMENT OF HON. JAMES M. JEFFORDS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VERMONT

Mr. Chairman, I appreciate your holding today's hearing. I think I speak for all the Members on our side in saying that we need to quickly address this issue. With the Department of Labor's October 15 enforcement deadline quickly approaching, I think we should provide reasonable and timely relief to states and municipalities caught up in the Supreme Court's decision in *Garcia* v. *San Antonio Metropolitan Transit Authority*.

These towns and states have operated in good faith to comply with the Supreme Court's 1976 decision in *National League of Cities* v. *Usery*. At the very least, we should allow them sufficient time to adjust their operations and personnel systems. For many states, the six months allowed by DOL's enforcement policy have simply not been enough. My own state, which is attempting to retire a deficit and which

convenes its legislature in the beginning of the year, has not had time enough to deal with the myriad of problems created by the application of the *Garcia* decision. And given the cost, estimated to be $850,000, I am not sure how Vermont can adjust to the decision without cutting back elsewhere in its budget. While $850,000 may not seem like a very large sum, relative to the state's budget, which is already tight, it is substantial.

The impact on the small towns and cities in my state will be substantial as well. Local finances are stretched to the limit. Property taxes are among the highest in the country, and taxpayers are unwilling to increase those taxes any more in many towns. Volunteers are critical to town and city government in my state. They serve on zoning boards, planning boards, fire departments, and so on. They do so as good citizens, not as oppressed labor.

I look forward to today's testimony, particularly that of my good friend Ed Zuccaro. I hope, Mr. Chairman, that we can work quickly to remedy the legitimate problems created by the Court's decision. Thank you.

Mr. JEFFORDS. I am curious as to your position that there would really be no significant additional cost. It seems to me if there is no additional cost, there is no additional benefit. If there is no additional benefit, then why do we change the system?

In other words, it would seem to me if there is going to be no additional cost that is going to mean we are not going to have people working for time and a half pay.

Therefore, you may even hire additional policemen or whatever to cover that additional time, or there may be other ways to absorb it or alter the system in order that there is no additional cost.

If there is, as I say, no additional cost, where is there any benefit? So why should we change the system?

Mr. GOTBAUM. Congressman, we didn't say there would be no additional cost. We talked about minimal cost.

Mr. JEFFORDS. Minimal benefit.

Mr. GOTBAUM. Let me respond to that because I think you are getting to the heart of our concern.

My concern here is not, say, just for example, New York City workers. There will be some cost. The national figures are, perhaps, three-tenths of 1 percent, and even Mayor Koch's own figures of four-tenths of 1 percent, but there is something that transcends that in terms of the mimimal cost.

I like good management. As a manager, I had no complaints with Mayor Koch. I think he is a tough SOB, and I think that is good. He is a competent one, and I think that is good.

Our job is to protect not only our members, but I think we have to be concerned about workers.

The reason for the Fair Labor Standards Act is to make sure there is not unilateral, managerial exploitation. That is the major reason for it.

I am saying to you that the costs are minimal, that the ability to exploit—and the firefighters can give you case upon case in regard to this—is monumental.

So, I am not so much concerned about the financial costs, and there will be some costs. We are not denying it. We didn't say there wouldn't be any.

Much more of concern to us as people representing workers is the exploitive ability of management, and the FLSA was set up to stop that exploitation, and there is no reason on God's green earth why 20 percent of the work force should be excluded from that safeguard.

Mr. JEFFORDS. Let me go on to another area, though first of all I will say I tend to agree with Mr. Petri's feelings in this area. We are not dealing with choice of one individual over another as you are in racial discrimination. The States can probably handle better this type of situation.

The witness after you, I believe, Ed Zuccaro, from Vermont, will be better able to articulate the answer to my next question from his experience in Vermont.

You are arguing for no exceptions to the rule, and I come from a State, probably the most rural in the Nation, where we have many, many circumstances where people are—well, they are a policeman during the day and volunteer fireman at night, and it is my understanding under those circumstances or similar circumstances, if they perform those kinds of activities, the town would have to pay time and a half for what is now a volunteer service.

We have stipends paid just to take care of inconvenience, driving or whatever. In those cases, we would have to go to a regular hourly wage and all those kinds of things that would greatly alter, if not add expense to, the ways our small communities handle problems.

Why do you think we should not even consider, as you are testifying, an exception for these areas?

Mr. GOTBAUM. Sir, the exceptions are already in the Fair Labor Standards Act. For example, you have supervisory personnel exempt. You have professional personnel exempt. You have——

Mr. JEFFORDS. Neither of those apply to a small town.

Mr. GOTBAUM. You don't have supervisors in a small town?

Mr. JEFFORDS. Not in those cases. You haven't been to a small town. I have been.

Mr. GOTBAUM. You probably have no—you have no fire department then in a small town.

Mr. JEFFORDS. I used to be the driver of fire truck No. 3 in the town of Shrewsbury, and the only supervisor was me.

Mr. GOTBAUM. You are in great shape. They will all be volunteers. I don't think this law touches it. They are exempt from the law. They are all exempt.

Mr. JEFFORDS. Five or fewer.

Mr. GOTBAUM. The point I am saying to you, then, you already mentioned an exemption where you have no pay, where you have no paid fire department, and it is all volunteers you are exempt from the law, so that you already have an exemption.

Mr. JEFFORDS. That is not true if you are employed in another capacity by the town, though. That is the point.

Mr. GOTBAUM. No, sir. No, sir. In another capacity, the law exempts you. It is only for doing the same work.

Mr. SCHAITBERGER. May I read a section out of the regulations, and I think it will address your question.

First of all, individuals that are volunteers are exempt. Let me read you two sections, one which Mr. Koch earlier alluded to.

Individuals do not lose their volunteer status because their tuition may have been paid. They may have been reimbursed for attending special classes or other training to learn about fire protection or law enforcement, or because they are reimbursed for approximate out-of-pocket expenses incurred incidental to answering

a call or for the cost of replacing clothing or other items of equipment which may have been consumed or damaged.

Nor is a volunteer status of such individual loss where the only material recognition afforded them is the holding of—is the furnishing of a uniform or related equipment, and further, volunteers engaged in fire protection and law enforcement activities may include individuals who are employed in some other capacity by the same public agency.

You just cannot be a firefighter employed as a firefighter and go back to that agency and volunteer as a firefighter, but you can be a PBX operator, you can be any other function within your small town and volunteer as a firefighter, and it is clearly exempt under the current regulations employed by the law.

Mr. PETRI. I would like to follow up on that. We have had areas slightly different where there are volunteer fire departments, but the municipalities or townships do pay $9,000 say, or $10,000 into the coffers of this volunteer unit.

They are made up of some people who work in other capacities for the cities and some not. These people do pay themselves, sort of.

I mean, they sort of have a point system or something and divide this money up among themselves, and they are very worried this would be in violation, or they would have to pay the one who had worked for the city more than one who didn't under the average amount that they have worked out among themselves as volunteers.

Mr. SCHAITBERGER. If I may answer that, Mr. Petri. Again, the regulations clearly provide an enormous amount of flexibility for providing some forms of compensation, although not direct compensation in the form of salary. The regulations again provide that you can pay them workmen's—into their workmen's compensation plan.

You can provide life and health insurance programs for them. I mean, there is an enormous amount of flexibility currently employed in 53.11 of the regulations which allow true volunteers to continue to function as volunteers.

Mr. GOTBAUM. The mayor mentioned they have 100,000 volunteers in New York, and probably we do. I have looked at the cases and really examined it.

I don't know of literally 1 of the 100,000 who would receive overtime in applying the overtime provisions of the Fair Labor Standards Act. Not 1 out of 100,000.

So, that the whole thing—it just becomes a terrible smokescreen.

Mr. JEFFORDS. You are pointing to the regulations, and there is some question as to whether there is any authority in the law for those regulations. Would you mind if we embodied those regulations in the law?

Mr. GOTBAUM. They are in the law, sir.

Mr. JEFFORDS. They are in the regulations, but not in the statute.

Mr. GOTBAUM. Yes, we don't mind that. We don't mind what is already in existence for the 80 percent of the other employees. I think we would agree to that.

That is not the problem. What is in existence here, we have no quarrel with that. If you want to solidify it, codify it, legalize it, that is your right.

I don't think any of us have a concern about that, Congressman.

Mr. JEFFORDS. Thank you, Mr. Chairman. I have to leave for another meeting.

Mr. MURPHY. Thank you, Mr. Jeffords, for being with us this afternoon.

One final question. Is it your opinion then, that under the existing law and regulations, that the only way that a "volunteer" could be brought under the scope of the act, no matter how many hours he volunteers, would be that he would have to be receiving more in the way of emoluments than what you mentioned?

Mr. SCHAITBERGER. That is correct. Or in the case of an employee volunteering their service directly in the agency in which they are employed, and that is the whole purpose of the act, not to allow employers to misuse such——

Mr. MURPHY. Call upon them to be volunteers for 6 days of the week.

Mr. SCHAITBERGER. Suggest strongly they would volunteer on Saturday to come in and provide some additional work.

Mr. MURPHY. Thank you very much.

Gentlemen, the next panel of witnesses consists of Mr. Robert Thompson, president of the Amalgamated Transit Union, local No. 694, San Antonio, TX; Mr. Gary Brazgel, president of the Milwaukee Police Association; and Mr. Eric Lamar, if he has arrived, president of local No. 2068 of the International Association of Firefighters, Fairfax, VA.

Will you three gentlemen take the witness table.

Mr. MURPHY. Mr. Thompson, you may proceed.

STATEMENTS OF ROBERT THOMPSON, PRESIDENT, AMALGAMATED TRANSIT UNION, LOCAL 694, SAN ANTONIO, TX, ACCOMPANIED BY ROBERT MOLOFSKY, LEGISLATIVE ASSISTANT; GARY BRAZGEL, PRESIDENT, MILWAUKEE POLICE ASSOCIATION, ACCOMPANIED BY MIKE LEIBIG, GENERAL COUNSEL, INTERNATIONAL POLICE ASSOCIATIONS, AFL-CIO; AND ERIC S. LAMAR, PRESIDENT, LOCAL 2068, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, FAIRFAX, VA

Mr. THOMPSON. Thank you very much.

My name is Robert Thompson. For 22 years I have worked as a bus driver for the San Antonio Metropolitan Transit Authority. Since 1974 I have been president and business agent for Amalgamated Transit Union Local 694, which represents all operators and maintenance workers of San Antonio Metropolitan Transit Authority. I am accompanied by Robert Molofsky, legislative director.

On behalf of Amalgamated Transit Union Local 694 and the hundreds of San Antonio bus operators, maintenance workers and other employees now covered by the Fair Labor Standards Act, I appreciate the opportunity to appear before you in support of the Supreme Court's decision in *Garcia* v. *San Antonio Metropolitan Transit Authority*.

My friend and coworker, Joe G. Garcia, serves as vice president of local 694.

Mr. MURPHY. Is that the famous Mr. Garcia we have heard a lot about?

Mr. THOMPSON. Yes sir.

Mr. MURPHY. Thank you.

Mr. THOMPSON. Like myself, he has been employed for over 17 years as a driver, and he shares fully in the views I shall express today.

We in the Amalgamated Transit Union Local 694, greeted with long-awaited satisfaction the Court decision to uphold the intent of Congress, first expressed in 1966 and expanded in 1974, to cover transit and other State and local employees under the Fair Labor Standards Act. The Court battle which settled the constitutional question relating to coverage was a long and complicated one. The principal issue was whether public transit, with its long prior history as a private service, was a traditional governmental function, and therefore constitutionally exempt from coverage under the *National League of Cities* case. We claimed it was not.

In 1976, my local first requested the Department of Labor to rule on whether my fellow transit workers were now covered under the act following the 1974 legislation. Thirty-three months later, in September 1979, the Department of Labor finally ruled that public transit employees were entitled to Fair Labor Standards Act benefits. Therefore, on November 21, 1979, San Antonio Metropolitan Transit Authority filed a motion to prevent application of the act to its city transit workers. On the same day, we filed our case on behalf of Joe Garcia, myself, and others, seeking to claim our congressionally mandated rights. On February 1, 1981, 1982, 1984, and finally in 1985, a series of extensive court hearings and decisions, culminating in the Supreme Court's ruling on February 19, 1985.

Mr. Chairman, I am not a lawyer and do not propose to discuss the legal ramifications of the Court's decision. My message today calls upon you to look carefully at the equities of the current move to repeal coverage. We believed the Supreme Court's decision is correct, and properly implements the full intent of the Congress to apply the Fair Labor Standards Act to public transit and other State and local employees.

For myself, for Joe Garcia and others, the Court's ruling merely recognizes that we, no less than other transit workers, are entitled to receive fair compensation for our work under the same standards which have for decades been applied to this country's private transit employees.

We see no resaon for this Congress to pass legislation to repeal, amend, delay, or in any other way, overturn the results of this constitutional litigation.

Since the Court ruling, I have been engaged in meetings with the Transit Authority to discuss ways of achieving compliance with the act. In July, the Amalgamated Transit Union and the authority submitted a joint recommendation to the Transit Board of Trustees, amending our existing work rules to meet Fair Labor Standards Act requirements, which was approved by the SAMTA Board.

In addition, San Antonio Metropolitan Transit Authority has agreed to satisfy our unpaid overtime claims beginning from Febru-

ary 19, 1985, for all affected employees. I have attached to my statement a copy of the special notice issued by the Transit Authority to all employees indicating their good-faith efforts to voluntarily comply with the act.

Litigation is otherwise ongoing to resolve all outstanding questions about back pay obligations, including the retroactive application of the February 1985 decision. Naturally, there is somewhat greater exposure for San Antonio Metropolitan Transit Authority under the Court ruling than most other transit properties because our case has been pending since 1979, and the period of back pay liability under the act may extend as far back as 1976.

We strongly believe, however, that the public transit industry's claims of exposure totaling some $50 to $100 million are grossly exaggerated. First, at the time our lawsuit was initiated, almost all public transit employers were paying time and a half for overtime over 40 hours per week.

In addition, as my recent experience in San Antonio indicates, it is possible for the parties themselves to work out changes in work rules, schedules, and assignments so as to avoid any long term increase in total operating costs due to Fair Labor Standards Act coverage under the Court's decision.

For example, before the ruling, bus operators in San Antonio were provided and paid 10 minutes for report time, used to prepare the bus for operation. Now, in an effort to reduce overtime costs, we have agreed to a modification providing for payments of only 5 minutes for report time, limited only to those employees initially driving buses out of the garage. The same 10 minutes has previously been paid for all operators, regardless of their work location. That was paid each day to them.

Based on offsetting work rule revisions such as this, I believe that they increased operating costs for overtime payments resulting from this decision will be well under 1 percent of the authority's total payroll.

Again, as my experience in San Antonio has shown, the financial and technical requirements now imposed on city transit operations by this decision are minimal and can, for the most part, be resolved through adjustments in working conditions so as to limit the long term financial impact. We have worked out our problems in San Antonio and I believe there is no reason that solutions to these issues cannot be found and applied elsewhere.

In closing, I would like again to urge the committee not to take any rash action to repeal, amend, or otherwise modify the impact of this Court decision, but rather to devote its attention to further research and study of the overall effect of this decision and how it is being handled by communities throughout the country to minimize the impact upon needed public services and ultimate financial cost to the taxpayer.

I would at this time be pleased to answer any questions the committee may have

Thank you.

Mr. MURPHY. Thank you very much.

[The attachment to the statement of Mr. Thompson follows:]

September 6, 1985

S P E C I A L N O T I C E

TO: ALL EMPLOYEES

On Friday, July 26, 1985, we started recording all of our bus operators hours of work in compliance with the Fair Labor Standards Act (FLSA); therefore, our computers have been re-programmed to pay all employees in compliance with the FLSA.

In order to fully comply with the FLSA, we are only required to retroactively pay employees based on their actual hours worked from April 15, 1985, through July 25, 1985; however, as a sign of good faith and in recognition of services rendered, employees shall be paid additional compensation as if the Fair Labor Standards Act applied to VIA for employment between February 19, 1985, and April 14, 1985, inclusive.

Our Payroll Department is now calculating the retroactive pay, which operators are entitled to; for hours worked from February 19, 1985, through July 25, 1985. This involves re-creating eleven separate pay periods on a day-to-day basis. This is a very time-consuming process; however, we anticipate that all employees will be paid for most of the retroactive pay, which they have earned in accordance with the FLSA, no later than December 15, 1985.

E. F. Carr
Assistant General Manager

EFC:cp

Mr. MURPHY. Our next witness is Mr. Gary Brazgel.

Mr. BRAZGEL. Good afternoon, Mr. Chairman, and subcommittee members. Joining me at the table is Mike Leibig, who is general counsel of the International Union of Police Associations, AFL–CIO.

I am Gary Brazgel, president of the Milwaukee Police Association, local No. 21, International Union of Police Associations, AFL–CIO, and region 6 director of the International Union of Police Associations, the AFL–CIO police affiliation. I am speaking today not only for International Union of Police Associations but also other law enforcement offices, including the Michigan State Police Troopers Association, and San Francisco Police Officers Association. I want to make three basic points about the Fair Labor Standards Act and its application to law enforcement, an issue about which there is much misunderstanding. The three points are:

One. The Fair Labor Standards Act provides significant new protection to police. This protection is widely needed, especially in small departments. Fair Labor Standards Act benefits to police have been minimized; the cost of complying with Fair Labor Standards Act has been greatly exaggerated.

Two. Comp time is vital to policing. Not only is it an important benefit to on the job police officers, but it also is an important tool of sound police management.

Three. Comp time where it was available before *Garcia* can be protected in most law enforcement situations after *Garcia* without new legislation.

It would be well to explain what comp time is and why it is so important to police officers. The phrase comp time stands for compensatory time off in lieu of cash payment for overtime work.

It is a matter of major consequence to police officers not only in Milwaukee but all over this country because it gives them time with their families which because of their 7-day-week, round the clock schedules, is severely limited.

Most people work days and have Saturday and Sunday off. Cops spend the first 10 to 15 years on night duty and there are only off days, not weekends, for time to spend with family. By the time a cop gets the day shift, his children are grown and out of the house. Hence, they regard comp time as more important that its presumed cash equivalent.

The Milwaukee Police Department has had a history of vigorous bargaining in its labor negotiations which have on occasion led to job actions, but overall, the relations between employer-employee although volatile, are cordial and have produced a department which is regarded as one of the best in the country.

Historically, the MPD had comp time as a means of paying overtime for many years but in bargaining for a 1983–84 contract, agreement was reached on all matters but the employer had insisted on limiting, if not eliminating comp time and would pay cash instead, and the employee bargaining committee had reluctantly agreed. When the contract was presented to the membership, it was resoundingly rejected. Strong feelings were expressed vehemently by the rank and file. The city subsequently agreed to a comp time provision and the contract was accepted.

In the most recent agreement which was negotiated over a period of 12 months, the comp time provision was encorporated without objection from either side and a tentative agreement was again reached. To illustrate the volatile nature of labor relations in Milwaukee, the contract was rejected twice on other grounds before a contract acceptable to the membership was reached, but finally, an acceptable contract was achieved on July 27, 1985.

Before the agreement could be executed by the parties and adopted by the common council of the city, the *Garcia* decision came down and the future of labor peace was in imminent jeopardy as its implications for eliminating the precious comp time swept through the ranks.

As soon as the Milwaukee Police Association learned of the *Garcia* decision, it arranged to attend a Washington conference which had James Valin of the Wage and Hour Division of the Department of Labor as a speaker on what *Garcia* would mean to police officers.

The city and the Milwaukee Police Association immediately scheduled meetings to discuss how to handle the apparent problems.

As a result of the Washington conference, I, as president of the Milwaukee Police Association, pursued ways to preserve comp time for the members and comply with *Garcia*. Meanwhile, the city, concerned about being in violation of the law, was pressing for definitive action by the association.

After the conculation with legal counsel, representatives of the Department of Labor, including Mr. Valin, I concluded that it was possible to permit officers to earn comp time without violating Fair Labor Standards Act or the *Garcia* decision. Since Fair Labor Standards Act or *Garcia* does not come into force until you reach 43 hours worked in a week or 86 hours worked in 2 weeks, these 3 and 6 hours bracketed time or gap time could be comp time. A fuller explanation of the gap time system is contained in the attached letters to the Department of Labor.

Since the city will be establishing a 2 week work schedule for the police department, the officer would be entitled to 6 hours of comp time biweekly before Department of Labor jurisdiction. The Milwaukee Police Association concept was that the Department of Labor jurisdiction didn't come into play until a police officer worked 43 hours and therefore, the parties could agree to treat the 3 hours as comp time if they chose. There was already an existing Department of Labor ruling, which it appeared would permit this construction.

There is a large amount of money that is going to cost, and Congressman Hawkins, you mentioned about Los Angeles. I did not know that the people of New York City only worked 35 hours, so we obviously could save them a lot of money if in fact they are only taking the hours from 35 to 40 hours and saying they can only use those as comp time. I could tell Mayor Koch now that he obviously could save a lot more money because FLSA does not come into effect until you hit 43 hours a week, so in effect, those 3 hours will be used as comp time.

If a man takes off an extra holiday, that day or extra comp time that he in fact has saved up, those hours would not be counted because the law says hours worked, not put in.

Mr. MURPHY. How is that again?

Mr. BRAZGEL. The act states hours worked, not just hours put in. Actual hours. Our workweek shows me as 80 hours working after a 2-week period on my time card, but those hours worked also take in holidays, off sick time, vacation time, emergency time that I, in fact, took on my own.

Mr. HAWKINS. What about lunch time?

Mr. BRAZGEL. In Milwaukee our lunch time is part of our contract. Many police departments have court time. We have a minimum of 2 hours court time. In San Franciso, they have a minimum of 4 hours court time. If you go to court and spend 10 minutes in San Francisco in court, you would get paid 4 hours minimum pay. Now, of course, if you stayed 10 hours in court in San Francisco, you still only receive 4 hours pay.

That time, because it is in the contract—not in San Francisco, they do not have contracts—but in Milwaukee, because we have a minimum of 2 hours, if we appear in court at straight time, those hours, if we did not work those complete 2 hours, are not in fact FLSA hours, they are in fact contractual hours and I take those hours as comp time except them, except the exact minutes that I worked. So if I put in 10 minutes in court, those 10 minutes in fact would be toward FLSA over time the 43 hours in the work period.

Mr. MURPHY. What you are saying, then is that even though you may be getting paid for court time and/or holidays, they are not covered as hours worked under Fair Labor Standards calculation?

Mr. BRAZGEL. Correct. They would not be a scheduled period when FLSA in fact goes in effect the 43 hours in 1 week work scheduled, 86 hours.

Mr. MURPHY. In 2 weeks?

Mr. BRAZGEL. Yes, and I believe it is 117 in a 28-day period.

Mr. MURPHY. 117?

Mr. BRAZGEL. We are on a 2-week schedule, so I know that one. We automatically will be able to bank 6 hours of comp time in the city of Milwaukee. We have a bank that is limited at 64 hours. In our last contract, the city of course negotiated with us and wanted to take away all of our comp time, anything that we had in the bank that we negotiated, they insisted they buy back at the end of the year. In our recent negotiations they said they do not want to buy back any more comp time. In fact, we can keep the comp time on our books—we call it a comp time bank—as long as we want. We have a limit of 64 hours.

There is nothing in FLSA that says you cannot keep this. We are very lucky in Milwaukee we have a labor agreement. In some small cities they don't. They can make those people work forever.

Incidentally, it should be noted that except for deleting comp time, the *Garcia* decision had little effect as the city was already paying overtime for all work over 40 hours with a few minor exceptions.

On July 24, 1985, the Milwaukee Police Association wrote a letter requesting the formal opinion mentioned above and asked for the earliest possible response. On August 12, 1985, the city added

its voice to the request for a formal opinion on the gap time concept. The Michigan State Police Troopers Association requested a similar opinion. DOL officials have indicated by telephone that the gap time system will work. It has been implemented in Michigan.

In early August, we were led to understand that the Wage and Hour Division had formulated a formal response to our request but that it had to clear through channels before it could be released as a formal opinion of the department. We have heard nothing since then.

Meanwhile, the city, concerned about its exposure, had informed the Milwaukee Police Association that it will take unilateral action to terminate comp time on the police department unless there is a formal Department of Labor opinion permitting comp time before October 1, 1985.

There is growing restlessness as Milwaukee officers and their families see plans aborted for the comp time the officer was expected to accumulate, but for the uncertainty brought on by *Garcia* and its aftermath.

I am here to urge this committee to expedite a decision on the formal response for Department of Labor on the gap time concept. It will relieve the concerns presently extant throughout the country and it will conform with the law as it exists and the *Garcia* decision.

This is an extremely important need just now since Department of Labor local offices and some Department of Labor national officials have been issuing faculty informal advice that comp time cannot be protected under *Garcia*.

Thank you very much.

Mr. MURPHY. Thank you very much, Mr. Brazgel.

[The prepared statement of Gary J. Brazgel follows:]

[Additional material submitted by Mr. Brazgel follows his prepared statement:]

PREPARED STATEMENT OF GARY J. BRAZGEL, PRESIDENT, MILWAUKEE POLICE ASSOCIATION, LOCAL 21, IUPA, AFL-CIO; AND DIRECTOR, REGION 6, INTERNATIONAL UNION OF POLICE ASSOCIATIONS

I am Gary Brazgel, President of the Milwaukee Police Association, Local 21, IUPA, AFL-CIO, and Region 6 Director of the International Union of Police Associations, the AFL-CIO police affiliation. I am speaking today not only for IUPA but also other law enforcement offices including the Michigan State Police Troopers Association, and San Francisco Police Officers Association. I want to make three basic points about the Fair Labor Standards Act and its appliciation to law enforcement -- an issue about which there is much misunderstanding. The three points are:

1. The Fair Labor Standards Act provides significant new protection to police. This protection is widely needed, especially in smaller departments.* FLSA benefits to police have been minimized; the cost of complying with FLSA has been greatly exaggerated.

2. "Comp time" is vital to policing. Not only is it an important benefit to on the job police officers, but it also is an important tool of sound police management. And,

3. "Comp time" where it was available before Garcia can be protected in most law enforcement situations after Garcia without new legislation.

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* See the attached news reports on Mount Vernon, Indiana's Problems.

It would be well to explain what "comp time" is and why it is so important to police officers. The phrase "comp time" stands for compensatory time off in lieu of cash payment for overtime worked.

It is a matter of major consequence to police officers not only in Milwaukee but all over this coutry because it gives them time with their families which because of their seven day week, round-the clock schedules, is severely limited.

Most people work days and have Saturday and Sunday off. Cops spend the first 10 to 15 years on night duty and there are only off-days, not weekends, for time to spend with family. By the time a cop gets the day shift, his children are grown and out of the house. Hence, they regard "comp time" as more important than its presumed cash equivalent.

The Milwaukee Police Department ("MPD") has had a history of vigorous bargaining in its labor negotiations which have, on occasion, led to job actions but, overall, the relations between employer-employee, although volatile, are cordial and have produced a department which is regarded as one of the best in the country.

Historically, the MPD had "comp time" as a means for paying overtime for many years but in bargaining for a 1983-84 contract, agreement was reached on all matters but the employer had insisted on limiting, if not eliminating, "comp time" and would pay cash instead and the employee bargaining committee had reluctantly agreed. When the contract was presented to the

membership, it was resoundingly rejected. Strong feelings were expressed vehemently by the rank and file. The City subsequently agreed to a "comp time" provision and the contract was accepted.

In the most recent agreement which was negotiated over a period of 12 months, the "comp time" provision was incorporated without objection from either side and a tentative agreement was again reached. To illustrate the volatile nature of labor relations in Milwaukee, the contract was rejected twice on other grounds before a contract acceptable to the membership was reached, but finally an acceptable contract was achieved on July 27, 1985.

Before the agreement could be executed by the parties and adopted by the Common Council of the City, the Garcia decision came down and the future of labor peace was in imminent jeopardy as its implications for eliminating the precious "comp time" swept through the ranks.

As soon as the Milwaukee Police Association (MPA) learned of the Garcia decision, it arranged to attend a Washington conference which had James Valin of the Wage Hour Division of DOL as a speaker on what Garcia would mean to police officers.

The City and the MPA immediately scheduled meetings to discuss how to handle the apparent problems.

As a result of the Washington conference, I, as President of the MPA, pursued ways to preserve "comp time" for the members and comply with Garcia. Meanwhile, the City, concerned about being in violation of the law, was pressing for definitive action by the Association.

After consultation with legal counsel, representatives of DOL including Mr. Valin, I concluded that it was possible to permit officers to earn "comp time" without violating FLSA or the Garcia decision. Since FLSA or Garcia does not come into force until you reach 43 hours worked in a week or 86 hours worked in two weeks, these three and six hours bracketed time or "gap time" could be "comp time". A fuller explanation of the "gap time" system is contained in the attached letters to DOL. Since the City will be establishing a two week work schedule for the Police Department, the officer would be entitled to six hours of comp time bi-weekly before DOL jurisdiction. The MPA concept was that the DOL jurisdiction didn't come into play until a police officer worked 43 hours and, therefore, the parties could agree to treat the three hours as "comp time" if they so chose. There was already an existing DOL ruling, which, it appeared, would permit this construction (29 C.F.R.S. 553.19) [1]

A formal opinion of the DOL was necessary and both the City and the MPA believed they could agree to make this "gap time" "comp time".

Incidentally, it should be noted that except for deleting "comp time", the Garcia decision had little effect as the City was already paying overtime for all work over 40 hours with a few minor exceptions.

On July 24, 1985, the MPA wrote a letter requesting the formal opinion mentioned above and asked for the earliest possible response. On August 12, 1985, the City added its voice to the request for a formal opinion on the "gap time" concept. The Michigan State Police Troopers Association requested a similar opinion. DOL officials have indicated by telephone that the "gap time" system will work. It has been implemented in Michigan.

In early August, we were led to understand that the Wage Hour Division had formulated a formal response to our request but that it had to clear through channels before it could be released as a formal opinion of the department. We have heard nothing since then.

Meanwhile, the City, concerned about its exposure, had informed the MPA that it will take unilateral action to terminate "comp time" on the Police Department unless there is a formal DOL opinion permitting "comp time" befor October 1, 1985.

There is growing restlessness as Milwaukee officers and their families see plans aborted for the "comp time" the officer was expected to accumulate, but for the uncertainty brought on by Garcia and its aftermath.

I am here to urge this Committee to expedite a decision on the formal response for DOL on the "gap time" concept. It will relieve the concerns presently extant throughout the country and it will conform with the law as it exists and the Garcia decision.

This is an extremely important need just now since DOL local offices and some DOL national officials have been issuing faculty "informal advice" that "comp time" cannot be protected under Garcia.

Murray & Moake, S.C.
Attorneys at Law

Kenneth J. Murray
Richard D. Moake
Laura A. Esserman

Suite 403
1840 North Farwell Avenue
Milwaukee, Wisconsin 53202-1776
Phone 414-273-2523

July 24, 1985

Mr. James Valin
Assistant Administrator
Wage Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Mr. Valin:

This letter will confirm our phone conversation on Tuesday, July 23, 1985, regarding the application of the FLSA to a specific fact situation relating to a police officer earning compensatory time off in lieu of wages.

The Milwaukee Police Association in currently bargaining with the employer, City of Milwaukee, about the impact of the Garcia decision on wages and hours and a question has arisen as to whether the partial overtime pay exemption ranging between 3 hours in a 7 day work period and 11 hours is a 28 day work period for law enforcement personnel may be allocated by agreement between the parties to compensatory time off regardless of how many hours in excess of the limit for the work period the particular employee may have worked.

Assuming the answer to that question is "yes," then we would like to know whether compensatory time off earned in that manner could be accrued to whatever limit the parties chose without violating the Fair Labor Standards Act.

Example: A police officer has a standard 40 hour week and under the agreement with his employer, earns overtime for all time spent in excess of 40 hours. The employer has selected a seven day work period. As FLSA jurisdiction does not kick in until 43 hours on a 7 day work period, both the employer and employee (through his union) have agreed that any time worked beyond 40 hours may be taken at time and a half as compensatory time off up to 3 hours per 7 day work period and any time worked beyond 43 hours will be paid in cash at time and a

half. Further, it is agreed between the parties that compensatory time earned as outlined above may be accrued without limit.

Is this agreement valid under the provisions of FLSA? Assuming it is, may the concept or principle be applied for whatever work period the employer chooses on the spectrum from 7 to 28 days?

As this is a critical question to our members at this time, it would be appreciated if the Department could formally respond at its earliest convenience so that we could have a guide in our current discussions.

In closing, let me say that I as well as Gary Brazgel, the President of our Association, thoroughly appreciated your presentation at the AFL-CIO seminar held in Washington on June 21, 1985.

Sincerely,

MURRAY & MOAKE, S.C.

Kenneth J. Murray

KJM/djr
cc: Mr. Gary Brazgel
DMPA-L.2 - L.3

CITY OF MILWAUKEE

Form CA-43

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
Deputy City Attorney

WILLIAM J. LURACEVICH
NICHOLAS M. BIBEL
JOSEPH M. BRENNY
THOMAS E. HAYES
CHARLES R. THEIS
JOSEPH M. McGRATH
PATRICK B. McDONNELL
REYNOLD SCOTT RITZ
BEVERLY A. TEMPLE
GREGG J. GUPTA
THOMAS O. GARTNER
LINDA ULISS BURKE
MILTON EMMERSON
BRUCE D. SCHRIMPF
ROXANE L. CRAWFORD
THOMAS C. GOELDNER
SUSAN D. BICKERT
HAZEL MOSLEY
VINCENT D. MOSCHELLA
HARRY A. STEIN
SCOTT G. THOMAS
STUART S. MUKAMAL
NANCY E. MALONEY
THOMAS J. BEAVEN
JOHN A. GRANDBERRY
KEVIN G. KEANE
PATRICK J. LUBENOW
Assistant City Attorneys

VIA FEDERAL EXPRESS

OFFICE OF CITY ATTORNEY

800 CITY HALL
MILWAUKEE, WISCONSIN 53202-3551
(414) 278-2601

August 12, 1985

CONFIDENTIAL

Mr. Jim Valin
Assistant Administrator
U. S. Department of Labor
Wage and Hour Division
200 Constitution Ave. N.W.
Room S 3502
Washington, D. C. 20210

Re: Fair Labor Standards Act (Compliance) - Compensatory Time Off Practices in the Milwaukee Police Department

Dear Mr. Valin:

I much appreciated the opportunity to have discussed the above-referenced subject last Thursday, and your kindness in taking time from your duties to assist us in resolving some outstanding questions that have arisen in connection with implementation of the Fair Labor Standards Act (FLSA).

One of the areas in which the City of Milwaukee needs additional guidance concerns the continued viability of certain compensatory time off (CTO) pay practices affecting uniformed police officers employed by the Milwaukee Police Department (MPD) in view of the applicability of the FLSA. These practices have been followed for a number of years and are emobodied in the applicable collective bargaining agreements. Their cessation or modification would cause significant fiscal and labor relations impact; hence, the need for advice on the subject.

In order to precisely illustrate the situations involved, it would be best to outline those circumstances prevailing under applicable laws and collective bargaining agreement provisions and then to pose a number of hypothetical circumstances. We would be grateful for your written advice as to whether these particular practices remain legally viable in light of the FLSA.

The following may be assumed in connection with all hypothetical situations set forth herein:

(1) All affected employes are uniformed law enforcement officers, are within the coverage of the FLSA and are subject to those regulations of the Wage and Hour Division as set forth in 29 C.F.R. Part 553.

(2) All affected employes are represented by labor organizations for purposes of collective bargaining and all items set forth herein are consistent with applicable labor contracts and state and local law.

(3) All affected employes receive more than the federal minimum wage for all hours worked, including hours for which compensation is taken in the form of CTO (i.e., assume no "minimum wage" problem).

(4) The MPD uses a 14-day "work period" for FLSA purposes (which coincides with the pay period), resulting in "FLSA overtime" entitlement for all hours worked in excess of 86 in any given "work period"; all labor organizations have agreed to this practice.

(5) The normal shift for police officers is 8 hours long plus a "roll call" period of 12 minutes (which is paid at time-and-one-half).

(6) The applicable labor agreements define all hours worked in excess of 8 hours in any one day as "overtime" payable at time-and-one-half with a few minor exceptions (this will be denoted as "labor contract overtime" to distinguish it from "FLSA overtime").

(7) Employes may at their sole option, elect compensation for all "labor contract overtime" (including "roll call") either in cash or in "bankable" CTO subject only to a maximum number of CTO hours in their respective individual "banks" (assume that this maximum never comes into play in the following hypothetical situations).

(8) "Normal" scheduling of a police officer over a 14-day "work period" is ten 8-hour shifts plus ten "roll call" periods of 12 minutes each, or 80 hours plus 2 hours of "roll call" (the latter at time-and-one-half).

(9) All CTO earned may be "banked" and used by the employe at his or her convenience at any time upon proper notice (assume that none is used in the same "work period" within which it is earned).

(10) All CTO, vacation, holiday, or sick leave as used herein is paid (i.e., time paid, although not worked).

(11) All hours worked by affected police officers in excess of 86 in any "work period" will be paid for in cash at a time-and-one-half rate in accordance with indisputable FLSA requirements.

(12) All labor organizations will agree with the desired CTO practices as set forth herein (if necessary, these practices may be incorporated into applicable labor agreements).

(13) The MPD will utilize an hourly "regular rate" of pay for computing "FLSA overtime" that will incorporate all applicable compensation additional to the officer's base rate (e.g., longevity pay, education pay, etc.)

The following definitions apply:

"Regular" hours: These denote hours worked on the officer's regular 8-hour shift. They do not include "roll call" or "labor contract overtime" (i.e., hours worked in excess of the "regular" shift).

"Banded" CTO: This denotes a practice (agreed to between the City and municipal labor unions) whereby the officer at his or her option may designate for CTO all or part of the "band" of hours falling between his or her sum total of "regular" hours for a "work period" and the applicable FLSA maximum number of hours for police officers for the "work period" beyond which "FLSA overtime" in cash at the rate of "time-and-one-half" must be paid for all hours worked. Examples: (utilizing a 14-day

"work period"). If the officer works ten regular shifts within a "work period," the CTO "band" consists of (86-80) or 6 hours; if the officer works nine regular shifts within a "work period," the CTO "band" consists of (86-72) or 14 hours, and so on.

Given the above, and considering the following hypotheticals, we would appreciate advice as to the validity under the FLSA of the CTO pay practices described below:

Hypothetical A: The officer works 80 "regular" 2 "roll call" and 2 additional "labor contract overtime" hours in a "work period," thus working 84 hours and entitling him (or her) to 86 hours of compensation (80 at "straight time," 4 at "time-and-one-half"). Can the officer elect to "bank" up to 6 hours of the 86 as CTO for later use?

Hypothetical B: The officer takes a day of vacation, and works 72 "regular," 1.8 "roll call" and 12 additional "labor contract overtime" hours in a "work period," thus working 85.8 hours and entitling him (or her) to 92.7 hours of compensation (72 at "straight time," 13.8 at "time-and-one-half"). Can the officer elect to "bank" up to 20.7 (13.8 X 1.5) hours of the 92.7 as CTO for later use?

Hypothetical C: ("Banded" CTO): the officer works 80 "regular," 2 "roll call" and 8 additional "labor contract overtime" hours in a "work period," thus working 90 hours and entitling him (or her) to 95 hours of compensation (80 at "straight time" and 10 at "time-and-one-half"). Does the FLSA allow the officer to elect to "bank" all or part of hours 80 through 86 (i.e., up to 6 hours) as CTO assuming that all hours from 86 through 95 are paid in cash at "time-and-one-half"? Stated otherwise, must the officer receive all 95 hours in cash or can he (or she) elect to receive 89 hours in cash and to "bank" 6 hours of CTO for later use?

Hypothetical D: ("Banded" CTO): the officer takes a day of vacation, works 72 "regular," 1.8 "roll call" and 18 additional "labor contract overtime" hours in a "work period," thus working 91.8 hours and entitling him (or her) to 101.7 hours of compensation (72 at "straight time," 19.8 at "time-and-one-half"). Does the FLSA allow the officer to elect to "bank" all

or part of hours 72 through 86 (i.e., up to 14 hours) as CTO assuming that all hours from 86 through 101.7 are paid in cash at "time-and-one-half"? Stated otherwise, must the officer receive all 101.7 hours in cash or can he (or she) elect to receive 87.7 hours in cash and to "bank" 14 hours of CTO for later use?

The next hypothetical arises from a question that came up during our recent telephone conversation. The issue may be stated as follows: Assuming that for purposes of determining FLSA "hours worked," hours for which the employe works and elects to accumulate and "bank" CTO are counted equally with hours for which the employe receives cash compensation (the actual practice in Milwaukee), must the hours during which CTO is subsequently "taken" by the employe also be counted as "hours worked," or, alternatively, would they not be counted in order to avoid "double counting," and in consideration of their having already been counted once before (during the "work period" within which the CTO was earned)? The following hypothetical illustrates this situation:

Hypothetical E: The officer works 80 hours of "regular" time, 2 hours of "roll call" and 2 hours of additional "labor contract overtime" for two consecutive "work periods," as in Hypothetical A. Assuming that it is proper under FLSA to do so, the officer elects to receive 80 hours of cash compensation and to "bank" 6 hours of CTO for each "work period," thus "banking" a total of 12 hours of CTO. During a "work period" occurring three months later, the officer works 68 hours of "regular" time, 1.6 hours of "roll call" and 16 hours of additional "labor contract overtime" and, in addition, elects to use the 12 hours of CTO in his or her "bank." Has the officer "worked" for FLSA purposes during that "work period" a total of 85.6 hours or a total of 97.6 hours? (The former, i.e., not counting the CTO, would not entitle the officer to "FLSA overtime," the latter, i.e. counting the CTO, would entitle the officer to 11.6 hours of "FLSA overtime").

These questions are ones that we cannot readily answer because existing regulations (particularly 29 C.F.R. § 553.19) are either silent or somewhat ambiguous on these particular points. The City wishes to comply in good faith with FLSA requirements, but at the same time does not wish to disturb

existing CTO-related pay practices that are supported by its employes (and by their respective labor organizations) and that have proven workable over time unless the FLSA mandates their revocation or revision. Given these circumstances, your guidance on the points outlined in this letter at your earliest possible convenience would be very much appreciated by myself, by other responsible City officials and by representatives of the affected municipal labor organizations.

I am grateful for your kindness and attention to these matters. Please do not hesitate to contact me at (414) 278-2601 if I might be of further assistance.

Very truly yours,

Stuart S. Mukamal

STUART S. MUKAMAL
Assistant City Attorney

SSM:ss

CC: Mr. Grant F. Langley
Mr. James W. Geissner

MICHIGAN STATE POLICE TROOPERS ASSOCIATION, INC.
834 North Capitol Avenue
Lansing, Michigan 48906
Phone (517) 484-6772

September 18, 1985

The Honorable William Brock
Secretary of Labor
200 Constitution Ave., N.W.
Washington, D.C. 20210

Dear Secretary Brock:

As President of the Michigan State Police Troopers Association, I have been deeply involved in the effort underway to adjust to the recent application of federal wage and hour rules to public employees. We are currently in mediation with the State of Michigan concerning our collective bargaining agreement. It is extremely important that we have up-to-date reliable information which is as sophisticated as possible of the options allowed under the federal wage and hour law. While a rather sophisticated view is widely circulating that all systems of comp time were lost with the Garcia decision, it seems clear to us and to others, including the Milwaukee Police Association and apparently at least seven other groups, that in many, if not most, police and firefighters situations traditional comp time systems which are favored by both labor and management can be legally preserved through a "gap time" system.

Our Association and at least eight others have requested opinion letters on "gap time" systems from the wage and hour division. I have attached our letter and the related Milwaukee correspondence. Jim Valin of the wage and hour division has been helpful. We understand that a response is near completion but may be delayed in the General Counsel's office. It is extremely important that we receive a response as promptly as possible.

Anything you or your staff could do to expedite this would be greatly appreciated.

Sincerely,

Gordon M. Gotts
President, MSPTA

Enclosure

cc: Jim Valin
Michael T. Leibig
Stephen Schlossberg

LAW OFFICES
ZWERDLING, LEIBIG & KAHN
1730 K STREET, N. W.
WASHINGTON, D. C. 20006
(202) 223-6373

ABRAHAM L. ZWERDLING ◇◇
MICHAEL T. LEIBIG ◇◇
WENDY L. KAHN ◇◇
RANDY S. RABINOWITZ ◇
DENNIS J. ORLE ◇◇

◇DC ◇MD ◇MI ◇NM ◇VA

MARYLAND OFFICE:
8207 BALTIMORE AVE.
BETHESDA, MD. 20814

VIRGINIA OFFICE:
3345 WESLEY COURT
ANNANDALE, Va. 22003

August 2, 1985

Mr. James L. Valin
Assistant Administrator
U.S. Department of Labor
Employment Standards Administrator
Wage and Hour Division
200 Constitution Avenue, N.W.
Room S3502
Washington, D.C. 20210

Dear Jim:

I am writing on behalf of the Michigan State Police Troopers Association to request a formal written administrative opinion regarding the application of Federal Wage and Hour laws to the law enforcement personnel in light of the Garcia decision and established work rules and collective bargaining agreements which provide for "comp" time. As you know, "comp" time systems are wide spread in law enforcement. Many have assumed that with Garcia no system of "comp" time is possible. We believe that a "gap-time/comp-time" system is achievable which on a practical level will protect most of the benefits to both law enforcement employers and employees of these "comp" time systems.

I discussed this question with you initially during the IUPA Wage and Hour Conference in Washington which I chaired in June. Later, President Gary Brazgel and attorney Ken Murray of the Milwaukee Police Association asked me to review it with you by telephone. They suggested that "gap" hours between the regular time actually worked by Milwaukee police, for example 40 hours a week in most cases, and the 43 hour, 7 day work period established, or at least "establishable," by a law enforcement employer under Section 7 (k) of FLSA might be available, together with other non-FLSA time such as holiday work time and certain portions of non-work "show-up" or "call back" time, to protect and continue the substance of the operation of long standing "comp" time systems which are viewed as beneficial by both police management and police labor. Initially, the DOL field office covering Milwaukee and the City of Milwaukee appeared to doubt the legality of such a system.

More recently, Gordon Gotts, President of the Michigan State Police Troopers Association (MSPTA) has faced a similar question. President Gotts and my partner Wendy Kahn, met with you on July 25, 1985, to discuss FLSA and its application to various questions arising in the Michigan State Troopers situation. During that meeting the value of an opinion letter was highlighted.

The Michigan State Police Troopers Association's current collective bargaining agreement allows use of compensoratory time with employer approval at time and one-half in lieu of overtime for work in excess of a basic 80 hour bi-weekly pay period. See Article 19 of the Agreement attached. On July 12, 1985, the Department of State Police put a policy into effect which provided that "until further notice, supervisors will not approve compensatory time in lieu of paid overtime, not assign an MSPTA unit member to work compensatory time UNLESS the member agrees to utilize the compensatory time within the pay period it is earned and the compensatory time off can be scheduled within the remainder of the pay period without adversely impacting operational needs. Absent such an arrangement, all authorized overtime will be paid in cash."

It is important that the technical requirement of FLSA with regard to "comp" time be made clear as quickly as possible.

The Michigan State Police Troopers Association requests a formal opinion on this question:

QUESTION: (a) If under section 7(k) a public employer in "law enforcement activities" properly and legally established a work period of 28 consecutive days, in lieu of the actual work week, for the purposes of paying FLSA overtime, establishing a maximum hours standerd of 171 hours; and

(b) If the employees of that employer, in fact, work a regular 160 hour schedule over the 28 day period--

May the 11 hour "gap" between the regular 160 hours worked and the 171 Section 7(k) schedule be used to generate a "comp" time system? That is, may a trooper working a regular 40 hour week (160 hours over the 28 FLSA period) use any hours worked over 160 and less than 171 for "comp" time without violating FLSA?

May the same "gap time/comp time" system be used with regard to any of the available section 7(k) schedules?

May other non-FLSA time such as holiday work time and portions of non-work "show-up" or "call back" time also be used?

COMMENT: It appears to us that the answer to the question is clearly "yes." 29 CFR 553.19 appears to make clear that any "gap" time may be used in a locally authorized "comp" time system without raising an FLSA problem. 1

We are concerned that the flexibility allowed by the "gap time/comp time" system may not be fully appreciated by either DOL's local offices or the employers with whom our clients deal.

Accordingly, we request a formal written administrative opinion. We appreciate your understanding of the need for as prompt a reply as is possible. If you need any further information or if there is anything else we can do to help expedite a response, please do not hesitate to call me. Thanks again for your continuing attention, candor, and expertise.

Sincerely,

Michael T. Leibig

MTL/mcj

Enclosure

cc: Gordon Gotts

1/ We ignore here, as extremely unlikely in the real world, the very limited hypothetical situation in which use of this "gap time/comp time" system could result in a spearate minimum wage violation. We assume for the purposes of this question that the total wages paid for the 171 used will continue to support an average hourly wage in excess of the federal minimum wage.

ARIZONA MISSES
"GAP" TIME RULE

On September 23, 1985 BNA's Daily Labor Report reported that Arizona employers and unions had succeeded in coming into compliance with FLSA. It was reported that careful compliance "saved" $4 million in Pheonix. Yet, it was also reported that the Phoenix police were upset about the loss of comp time stating that "Now, any compensatory time must be used within a 28 day work period." This is typical of current misunderstanding of the availability of "gap" time. Had Pheonix been able to take advantage of a clear DOL gap time compliance guideline of the type we seek, much more could have been saved.

MTL/kem

Mr. MURPHY. The next witness is Eric S. Lamar, president, Local 2068, International Association of Fire Fighters, Fairfax, VA.

Mr. LAMAR. My name is Eric Lamar and I am a firefighter and emergency medical technician with the Fairfax County, VA, Fire and Rescue Department. I have been employed as a firefighter for 10 years.

I am also the president of the Fairfax County Professional Fire Fighters Association, IAFF, Local 2068, an 820-member public employee union representing both firefighters and paramedics.

I appreciate this opportunity to appear before you today. My comments will be brief and I will confine them to two principal areas: The implementation and fiscal impact of the Fair Labor Standards Act, from the firefighters point of view. That viewpoint is significant, since the intent of the act, as I understand it, is to improve overtime compensation policy for State and local employees.

Having viewed and participated in the implementation of the Fair Labor Standards Act in a 1,025-member fire department that is one of the largest in the United States, I can say without any hesitation that any controversy surrounding the supposed nightmare of implementation or the threats of a fiscal crisis that would occur after implementation are literally much ado about nothing. Our own experience has been that if management and labor work together in identifying potential problem areas, and propose appropriate solutions, then implementation will occur with a minimum of duress and confusion.

Fairfax County obviously became aware of their increased responsibility resulting from the court decision in late February 1985. As early as March, the county government had created a task force to evaluate problems associated with the application of the Fair Labor Standards Act in Fairfax County. Over the next several weeks, work schedules were examined to determine how they would be impacted by the Fair Labor Standards Act.

A fire department task force as created to develop a list of alternatives to the present work schedule that would theoretically result in a decrease of overtime compensation in the long run. It was eventually determined that to simply maintain our present work schedule and provide the additional compensation, when the Fair Labor Standards Act standards had been met, was the most cost effective course.

Over the next 60 days, the office of personnel and the fire department made changes to the personnel rules that placed us in compliance with many portions of the Fair Labor Standards Act immediately.

By late May, the office of personnel had developed the new procedure that would allow for implementation of the Fair Labor Standards Act for firefighters and police officers. Employee groups were briefed throughout the process and encouraged to identify potential problem areas prior to implementation.

In June 1985, the fire and rescue department prepared a training program to be given to every employee about proposed changes

that would occur under the Fair Labor Standards Act. Additionally, the chief of the fire department, Warren Isman, prepared a 30-minute video tape on the Fair Labor Standards Act that was disseminated in early spring. The department training sessions were given to all employees on duty in over 30 work locations in just 3 days.

On July 6, 1985, the Fair Labor Standards Act was implemented in Fairfax County. While there have been some modifications, the Fairfax County experience proves that Fair Labor Standards Act can be implemented in a timely fashion by even large municipalities without, by any means, catastrophic results.

Much of the controversy surrounding the Fair Labor Standards Act has centered on the fiscal impact that implementation would have on the municipality. When the Supreme Court decision was announced, we were led to believe that drastic cutbacks would be necessary since the department would be incurring tens of millions of dollars in increased costs as a result of the Fair Labor Standards Act. The presumption that the Fair Labor Standards Act is an ironclad guarantee to boost the wages of workers is absolutely false. The Fair Labor Standards Act offers only an opportunity for the attentive, interested employee to receive additional compensation.

Employees who do not pay strict attention to the work cycle, their own shift schedule, and their scheduled days off, will not only lose any Fair Labor Standards Act compensation, but may experience a net decrease in pay if that pay includes non-Fair Labor Standards Act overtime. This is true since the regulations governing all overtime have been made subject to Fair Labor Standards Act criterion.

As an example, prior to implementation, an employee would receive overtime compensation for any hours worked beyond the scheduled tour of duty. This overtime was guaranteed regardless of the number of leave hours taken in that work period. Since the implementation of the Fair Labor Standards Act, if the employee has failed to meet the Fair Labor Standards Act standards for the work cycle, he will receive only straight time for the overtime hours worked and not overtime. This results in a substantial savings for the municipality. For the employee who is unwilling to track the variables within a particular work cycle, a decrease in net pay as compared to pre-Fair Labor Standards Act compensation may result.

In summation, I would like to leave you with the sense that the Fair Labor Standards Act can be implemented in a timely fashion, with proper preparation and employee education and that under the current law there is, unfortunately, sufficient latitude for municipalities to reduce the fiscal impact of paying firefighters a decent wage.

Thank you.

Mr. MURPHY. Thank you very much, gentlemen.

Let me ask you a question. I think we all come down to the same understanding, apparently that under some work agreements, and even in instances where there are no agreements; but understandings, compensatory time is being allowed beyond the gap time.

Now, you think that we should amend the act to provide this latitude in your negotiations. Apparently that is something that was concerning the mayor and others. Do you think the act should be amended to allow the payment of comp time beyond the 43 hours or beyond the 53 hours, beyond the 40 hours, if it is regular employees?

Mr. BRAZGEL. Most police officers would love to have comp time, an unlimited amount of comp time so that they in fact can be off with their families.

Mr. MURPHY. So the answer is yes?

Mr. BRAZGEL. Let me elaborate. One of the reasons why is because on our off days we many times have to go to court. So in reality, police officers don't have an off day. So we would like to have another off day in place of when there in fact are enough people can work on the streets to protect the citizens, we can in fact be off.

Speaking from Milwaukee, we do not want to change this act if in fact it is to spoil or amend that which would not protect a smaller municipality who needs this protection under the Fair Labor Standards Act.

Mr. MURPHY. I fail to see how amending it merely to provide comp time would do that, do you? Do you see any pitfall in that?

Mr. BRAZGEL. If there would be an amendment only for comp time, Milwaukee and many police departments and associations would appreciate that.

Mr. MURPHY. And would you consider comp time at equal time, at straight time?

Mr. BRAZGEL. No; we would not. Our overtime is time and one half.

Mr. MURPHY. Your comp time is time and a half?

Mr. BRAZGEL. Yes, it is on the choice of the employee.

Mr. MURPHY. Over what number of hours, 40?

Mr. BRAZGEL. Yes sir.

Mr. MURPHY. You haven't been as tough as those New York unions to get 35 hours?

Mr. BRAZGEL. No; we get time and a half after 40.

Mr. MURPHY. They only get straight time up to 40.

Mr. BRAZGEL. We live in the city of Milwaukee. We have a better quality of life. If I ever get to heaven I don't care who is there.

Mr. MURPHY. Now, as I understand it, did you tell us in your testimony, that the accumulated comp time is still permissible under the act, under the regulations?

Mr. BRAZGEL. The act does not talk about accumulating time at all. It just states that after 43 hours pay or pay scheduled time period, you have to pay time and one-half paid overtime.

Mr. MURPHY. Paid overtime?

Mr. BRAZGEL. Most police departments have. Anyway, the largest municipalities have.

Mr. MURPHY. So what you are saying, the accumulated comp time that you would get is in this gap period.

Mr. BRAZGEL. OK.

Mr. MURPHY. The act says nothing, the regulations say nothing negative, so you are permitted, if you have a contract, or a negotiated agreement, or they give it to you, there is no violation of the

Fair Labor Standards Act or its regulations, if you are paid comp time in the gap period, and you are allowed to accumulate it?

Mr. BRAZGEL. Correct.

Mr. LEIBIG. There is something in the regulations about, it which is 29–CFR–5A3.19. What is says is that you can do that.

Mr. MURPHY. You can do it?

Mr. LEIBIG. Right, and we have received repeated verbal confirmation from the Wage and Hour Division that you can do that, and Milwaukee is doing it. I represent the Michigan State Troopers. They put it into effect based on the verbal opinion. What Mr. Brazgel was pointing out, we can't get the Department of Labor to issue a letter of opinion so we can share it with other forces and that is one of the problems we have been having dealing with the Department of Labor in them getting around to issuing a letter.

Mr. BRAZGEL. If they would give out a written opinion——

Mr. MURPHY. If the Secretary of Labor will agree to meet with me as I have requested on this issue, that is one question we will ask him. If he agrees to come and meet with us.

Mr. BRAZGEL. If in fact he would meet with you and give out that letter to ourselves and other cities, I think that you would see the League of Cities and Municipalities come in here with a lot lower estimates for overtime usage.

Mr. LAMAR. I think it is important to point out for firefighters that within a work cycle we can accumulate a fair number of gap hours. For instance, if we take 2 hours, 2 days off, that allows us to then accumulate, we can turn that round and work 2 days of overtime in that work cycle and accumulate 48 hours of gap time. That is technically comp time that we are earning. So we have the flexibility within the current system to really earn a great deal of comp time.

Mr. MURPHY. You are not accumulating it as straight time, you are telling me it is at time and a half comp time, so really the employer is only giving an extra half hour.

Mr. LEIBIG. That depends on the arrangement between each locale. In Michigan where they have a labor contract provides time and a half, it is time and a half. They can use gap time. In New York it is straight time not set by the Fair Labor Standards Act and the gap time that depends on whatever the other collective banking arrangement or civil service rules or whatever they are. All gap time means is you don't violate the Fair Labor Standards Act allowing gap time. Milwaukee would have to be time and a half, that is what collective bargaining says. I assume in Fairfax County it is time and a half too.

Mr. BRAZGEL. If you had straight time between 40 and 43, you would get paid straight time because the Fair Labor Standards Act does not go in effect until 43 hours.

Mr. MURPHY. That is right.

Mr. Hawkins.

Mr. HAWKINS. I have no questions. However, it seems to me if we are going to get into the issue of whether or not the cost estimates that have been furnished to us by different witnesses are reliable, that we are going to have to get an answer to the letters that have been sent to the Department of Labor, requesting clarification of the gap time, comp time concept. Because that makes a big differ-

ence. I would suggest, Mr. Chairman, that we direct the staff to send a letter to the Department of Labor requesting clarification of this. As I understand it there is some reference to it in the regulations, is there not?

Mr. LEIBIG. Yes sir.

We have given the committee, as attached to Mr. Brazgel's testimony, copies of the city attorney of Milwaukee's letter to the Department of Labor; Mr. Brazgel's letter to the Department of Labor, of the head of Michigan State Troopers Association's letter to Secretary Brock, and of my letter to them.

Mr. HAWKINS. Independent of these letters, I am requesting that the committee itself try to clarify the concept and in terms of its application, because this would make a difference in the cost estimates which seem to be the great bone of contention.

Mr. MURPHY. A good suggestion.

Mr. HAWKINS. Do you have any problem with that?

Mr. MURPHY. Absolutely none with that, and I will so instruct the staff that we will get a letter down to the Secretary requesting this information citing the regulations, and then if the Secretary agrees to meet us this week as I have requested, he can perhaps bring that answer with him.

Mr. HAWKINS. In either case we would like to have an answer. Thank you.

Mr. MURPHY. Thank you, Mr. Chairman.

Mr. Petri.

Mr. PETRI. Thank you.

Just as I understand your testimony, particularly Mr. Lamar and Mr. Brazgel—correct me if I am wrong—it is essentially that you have in your areas been able to come into what you feel is compliance with the Fair Labor Standards Act without greater cost being imposed on that municipality. Could you discuss, mention, or highlight, or pinpoint for me any benefits or improvements that have accrued to your members as a result of all these adjustments that you have discussed? I mean, how are you better off now that you have made these adjustments and have come under the Fair Labor Standards Act? Are your members happier? Do they have greater freedom? Are they going to get more money? What are we accomplishing by going through all those hoops that is making the world a better place as far as our members are concerned? Are we just avoiding a damage in your particular units, that is what I am asking.

Mr. LAMAR. I guess it is actually twofold. Of course, we are extending some additional protection that we didn't have before, and I have to point out I am a public employee of Virginia where we don't have any kind of agreement. And so, as I pointed out in my testimony, for the employee who is willing to take the time to look at all variables in the work schedule, they are increasing their compensation rates some, so that is important.

Also, we have a stricter idea now in terms of regulations about how comp time can be awarded and we are in favor of that, since as a result of the gap rules, we have the opportunity to both earn and accumulate comp time hours.

Unfortunately, as the chairman points out, it is a straight time rate. So we consider it an improvement.

Mr. BRAZGEL. In Milwaukee, with the bargaining agreement, as far as money and wages, it does not affect us. Any other part of the Fair Labor Standards Act, of any improvement, we have not reaped any of those benefits that we see regardless of the comp time issue. In fact, it reduces our comp time, where because nobody is looking at this gap time. Although our city agrees with us on gap time and waiting for this letter, I am sure other cities would be happy to get that letter. That would help us with our comp time because our officers, in fact, could bank 12 hours a month.

Mr. THOMPSON. If I might comment. Within the transit industry are very few proposals in this country that have anything to do with comp time. We have no comp time. Toward the benefit of what is doing for my employees in San Antonio, transit is operated like nothing else you have ever seen. Only 25 percent of your operators or work force are given property work on a straight-time basis of 8 hours and go home. Everything else is split shift. So for a number of years especially extra board operators cover another 25 percent of my property could work 50, 50, 60 in any week of work, and it was always straight time.

It is not straight time on a daily basis. They work 5 days and hours are chopped up. They start at 5 in the morning and not finish until 11 o'clock at night, and there was no overtime. Fair Labor Standards Act was a great benefit to transit workers in this country to at least get them, after they passed the 40 hours in a work week, to get them compensation, because of these big splits and that is the nature of the business. It is like the airline business. But the greatest benefit has been to those people or that 75 percent of my workers that have split shifts and are compensated for overtime.

Mr. PETRI. So you would say unlike police and firemen, with your type of workers there would be a cost increase, but we will——

Mr. THOMPSON. We have also sat down, like I pointed out in my testimony, with management and worked out some work rules to minimize the amount of cost, and we don't believe the figures that have been given out by the transit industry. They are over exaggerated in some cases. On my own property figures have been given out to the Congress here. They are taking in whatever overtime they ever paid on that property, including a little bit that Fair Labor Standards Act has acted on, and I think this is the reason we are asking, or I am asking that you take time to investigate if they are saying one thing and we are saying another, take time to investigate before you create another situation, and then we have another lawsuit and more time in court.

In our particular case, in San Antonio—and yes, we are the ones that started it all—and after 8 years and 2 months we felt we had waited long enough between the DOL and all the court actions, 8 years and 2 months was long enough to wait and we wouldn't want to see us or anybody else in this country, have to go through a wait like this to reach the determination on are you due overtime or not? Please, please take your time and make a just decision for public employees in this country.

Mr. PETRI. Are you telling us that in your opinion, you have worked out the problems with the Transit Authority since the decision?

Mr. THOMPSON. Yes sir. That is what I tell you in my testimony. I think it can be done.

Mr. MURPHY. You think it can be?

Mr. THOMPSON. As the police have done and firefighters have done. That can be done.

Mr. MURPHY. You do not provide compensable time, is that correct?

Mr. THOMPSON. No; we have no compensable time. That is an impossibility in our business.

Mr. MURPHY. As soon as a worker passes 40 hours in a given work week, he is paid time and a half?

Mr. THOMPSON. Forty hours actual time worked, no time allowed, actual time worked.

Mr. MURPHY. Would you provide us with the additional costs? Apparently it was not that way before last February. We will ask the Transit Authority the same thing we would like to ask of you, and we will compare the answers. Hopefully they will agree.

What has been the additional cost. You can put it on per-pay-period basis or per month, or a total accumulated cost for the months involved, since the time they have been paying time and a half as compared to prior to the *Garcia* decision. Would you provide us with that statistic?

Mr. THOMPSON. Yes sir, I will.

Mr. MURPHY. OK, thank you.

Mr. BRAZGEL. As far as the costs, when they are looking at cities, looking at these costs of comp time banks, many of those hours in the comp time banks, what they are saying they have to pay off, I do not agree that they have to pay those off, I believe the workers can take those days off.

Our part of this escalated cost and some of those hours are at straight hours and under contracts or agreements and cities are looking at those hours and just taking them as a whole and saying we have to pay those hours again at the one-and-a-half rate.

Mr. MURPHY. You are telling me that supposing the comp time bank was hours accumulated beyond the Fair Labor Standards Act hours, beyond the 43 hours, now you are telling me you do not believe that the city has to buy those back?

Mr. BRAZGEL. If, in fact, it is beyond the 43, but under the gap time many of those hours would not be over 43, and a lot of those——

Mr. MURPHY. You are dividing the accumulated hours so that the gap time accumulated hours are permissible, they need not be bought back, however, the hours beyond the gap period accumulated under the Fair Labor Standards Act, since *Garcia* case must be bought back? Are you telling me that?

Mr. BRAZGEL. I am telling you those hours under 43, if they are in that schedule they would not have to be bought back.

Mr. LEIBIG. That is true unless they were accumulated as many were, before April 18, 1985. And one thing that has been mentioned a couple of times—that is the effective date as of today.

Which I want to make one other point about that. Is that the April 15 deadline and October 15 deadline, that has been mentioned; there is no real deadline of October 15.

All October 15 means is that the Department of Labor said that they, meaning their offices, aren't going to begin enforcing the act until October 15.

That doesn't mean on October 15 they are going to begin enforcing the act. We know——

Mr. MURPHY. That means up until now they haven't bothered getting into the act.

Mr. LEIBIG. I believe we have heard one estimate they may have to spend $50,000 enforcing the act after October 15. If all they are spending is $50,000, they might be able to answer our letter.

So employers that are contacting you, that are pressuring you that October 15 is a cliff we are going to fall off, that is just not true.

I think that should be clear, generally. On your specific question, the point was that a lot of the big—a lot of employees we have talked about ourselves. There are a few police officers who make a hobby of collecting comp time. They have comp time beyond what they will ever use.

That is an abuse. It does happen. Some of the comp time banks, like the city of Los Angeles in their comp time bank, they have a liability.

Much of that liability for before April 15. Not only the GAP time reduction has to be calculated but also the pre-April 15 time has to be——

Mr. MURPHY. It would seem to me if we impose, or the act imposes additional costs on the municipalities, on the agencies of local government, that the biggest cost, from what I gather from your testimony, would be the purchase of the comp time beyond GAP, at time-and-half, since April 15, not before.

Is that correct?

Mr. LEIBIG. Right. It depends on the individual locality; but in very large cities that have had it in place a long time, that could be one of the biggest factors in what they are saying the costs are. We don't know how they are figuring these costs.

Listening to Mayor Koch, if everything he said was true, just by using GAP time you would save a good percentage of what he was referring to as the cost. At one point he said $20 million for police officers comp time——

Mr. MURPHY. If we get into amending the act in regard to comp time, would you suggest that we place a limit on the number of hours for accumulation of comp time so that we do not entice the policeman who wants to accumulate 186 hours of comp time so some day he can go around the world?

Do you think we ought to place some calendar limit?

Mr. BRAZGEL. Prior to two contracts ago in the City of Milwaukee, there was no limit on comp time. We have a 64-hour limit now on comp time.

Mr. MURPHY. When you come in and testify you are here because you are organized. We have 25 States where that couldn't be possible because they couldn't even negotiate.

Mr. BRAZGEL. They may not have any comp time whatever but just comp time that is straight time.

Mr. MURPHY. They probably would have comp time as straight time according to the benevolence of the employer they work for.

Mr. BRAZGEL. In the past—prior to a cap on our comp time—I might say, many officers had around 100 hours or so on the books, or in the computer in our bank that we, in fact, could have there. In fact, our department encouraged us to use a lot of—in Wisconsin, because of the cold and vacations that more people are off in the summer.

Mr. MURPHY. How long can you carry your 64 hours, indefinitely?

Mr. BRAZGEL. Indefinitely. In fact, they did buy back, prior to this contract, and they told us they no longer want to purchase back our comp time. We, in fact, could keep them on the books as long as we want.

Mr. LEIBIG. Another example, the people of San Francisco are here with us, they can accumulate unlimited comp time, but somebody in the city has the option if the city wants to buy down anybody to 180 hours. Our feeling would be, that is well managed at the local level and that really is, once—if you are going to allow comp time and make it voluntary with the individuals, I don't think it would make any sense to put any time limit on it.

Mr. BRAZGEL. In San Francisco, in 17 years one of the officers was there, they have only bought back once, of their maximum comp time down to 180 hours.

Mr. LEIBIG. One brief point. The problem with comp time, especially shared in smaller places—I am doing some work for the Mount Vernon, IN, Police Association, which is hardly an association, there are 11 police officers there—when *Garcia* came out, they had a big problem on how they are going to adjust this. They are still having that problem.

One of the problems that came out, the traditional problem with comp time, is that it becomes a forced situation, and where there is not a collective bargaining contract, or where you don't have a big city or big county with a civil service system combined, there can be abusive use of comp time, a situation where sort of voluntary forced work, that the comp time is never anticipated to be paid.

In Mount Vernon, people had large banks of comp time; you can only use the comp time with approval, and they never approve it. So there is a problem with comp time.

So we are somewhat concerned about the idea that the act would be amended to completely allow GAP time. It happens technically GAP time mechanism gives us a comfortable margin we think in a year, while allowing police to accumulate 100 hours, and we think from the experience in San Franciso, Milwaukee, and other places, that is a comfortable margin and legislation is not needed.

Mr. MURPHY. Thank you very much, gentlemen.

The final two witnesses we have this afternoon, and I request them to come to the witness table: the Honorable Edward R. Zuccaro, of the Vermont House of Representatives, representing the National Council of State Legislators; and Ms. Anita Anderegg, county executive, Fond du Lac County, WI, representing the National Association of Counties.

I would like to welcome one of our former colleagues from the State legislature.

Mr. ZUCCARO. It is a pleasure to be here.

Mr. MURPHY. Thank you, Mr. Zuccaro. You may proceed.

STATEMENTS OF HON. EDWARD R. ZUCCARO, VERMONT HOUSE OF REPRESENTATIVES, NATIONAL COUNCIL OF STATE LEGISLATORS; AND ANITA ANDEREGG, COUNTY EXECUTIVE, FOND DU LAC COUNTY, WI, NATIONAL ASSOCIATION OF COUNTIES

Mr. ZUCCARO. I am appearing this afternoon in my role as vice chairman of the Law and Justice Committee of NCSL. I have submitted a prepared statement for the record; and I will try just to summarize the contents of that statement, recognizing that the hour is dragging on.

First I would indicate that my interest in the question of the applicability of the Fair Labor Standards Act, and the effect of the *Garcia* case is not only limited to my role in NCSL, and as a member of the Vermont General Assembly, but initially I am an attorney, actively practicing law in Vermont, and represent a number of small municipal clients, small municipalities.

As Congressman Jeffords indicated Vermont is perhaps the most rural State in the country; and when we talk about the kinds of numbers that Mayor Koch talked about, they are really not applicable in a State like Vermont. And one of the preceding speakers was quite correct when he indicated that the small municipalities in Indiana had some unique problems which were quite different than the situation with regard to comp time and GAP time in Milwaukee or Los Angeles or San Francisco.

The State governments and local governments are genuinely concerned about the ultimate impact *Garcia* will have with regard to municipal labor costs. That led the National Conference of State Legislators on May 10 to unanimously adopt a resolution that NCSL urges Congress to pass legislation to exempt or limit the application of the Federal Labor Standards Act to State and local government employees.

And I am here today testifying on account of that resolution.

There are really three major concerns that NCSL has. The first concern is one with regard to volunteers. And I agree, Mr. Chairman, if it was easy to distinguish who were really volunteers and who were employees, their really probably wouldn't be a problem, or an issue at all. But at least in Vermont we have a lot of situations where people do receive a small stipend, do receive a very nominal compensation.

The mayor, Koch, referred to the Foster Grandparents. We have a program where juveniles who are ordered to appear in judicial proceedings are afforded a guardian ad litem. Most of these guardians ad litem are retired individuals or people with plenty of free time, and some of them have to travel some distance.

Vermont's population is widely scattered out and they receive either $10 or $15 as serving for guardian ad litem for a whole day in court. It is those kinds of people we fear might fall under the protection of FLSA if some compensation for volunteers is not provided. The St. John's Recreation Department, the community I live in——

Mr. MURPHY. May I interrupt you there so we can follow this. You are saying that fair labor standards would not come into play until that guardian ad litem or somebody else was exceeding 40

hours a week in doing their duty, and receiving $2.50 a day during that time.

Mr. ZUCCARO. That is right. And we see if a court case——

Mr. MURPHY. I guess I fail to understand how a volunteer can get into that situation, putting in more than 40 hours a week.

Mr. ZUCCARO. That volunteer, during the entire course of the judicial proceeding, who is appointed a guardian ad litem for that juvenile, is required to be present whenever that juvenile is in court. There are many juvenile proceedings.

Mr. MURPHY. Who spends 40 hours a week in court?

Mr. ZUCCARO. No, but in one particular week a case might go on for 2 or 3 days. There may be some depositions that are taken.

I can very easily conceive that in certain cases that guardian ad litem might have spent in that program, that amount of time. A person may be a guardian for more than one juvenile in the course of a week, and I think that there is a real likelihood that that person could come under the application of the act.

Our local recreation department sponsors basketball tournaments where they pay referees nominal compensation, something like $25 for refereeing an entire tournament, which might start on Friday night, run Friday, all day Saturday, and all day Sunday; and I think that those individuals have a potential for coming within the application of the act.

Second, we have a concern with regard to the retroactive liability provision of the act. We think that there are many States and local governments who have collective bargaining agreements which would require many changes. Those agreements may not be up for renewal, and it is my understanding that the act would apply regardless of whether there is a conflict between the provisions of an existing collective bargaining agreement, and the provision of the act.

Also, revising budgets is a particular problem for States that don't have full-time legislatures. Vermont is still a State where serving in the legislature is a very part-time basis. In States with a biannual budget appropriation for the current year were made long before anyone was aware of the impact of *Garcia;* and the decision I think has caught many States and local governments clearly by surprise. We would urge that you consider providing at least a phase-in period so as to give some relief to State and local governments concerning the retroactive aspects of the act.

Third, I would like to address the question of the issue of time and half, and the overtime provisions. There has been a lot of talk about GAP time and the ability of municipalities to award compensatory time. Outside of the fire departments and the police departments, especially in the large cities where they may have some GAP time, there are many communities where the regular work week is 43 hours, or 45 hours, which would require payment of overtime with a direct cost to those units of government right now.

But there are a lot of State and local employees who would be subject to the 40-hour provision. In Vermont there are not quite so many municipalities and State governments providing a work week of 30 hours, as Mayor Koch knows in the city of New York, and those governments are going to have a direct cost right now.

The seasonal nature of a lot of jobs makes comp time very attractive to government employees. In Vermont we have a real problem with snow removal, starting in early December, sometimes extending into April, and very often the small town that Congressman Jeffords talked about, where the entire road department consists of one person driving that snow plow truck, he is quite content to work the number of hours necessary to get the job done during the winter and go fishing during the summer.

And those relationships, which have traditionally existed, would be eliminated by the applicability of FLSA to those situations.

Now, another seasonal activity, at least in Vermont, is the State legislature, and during waning days of the legislative sessions it is very common to work long hours, well into the night, regardless of whether someone stops the clock from running or not, to stop the session from going into a Sunday, and the clock is not going to stop in the running of overtime for those legislative employees who do not fall within the exempt category. And it seems to me a much better argument to have those legislative employees employed full time with the ability to award some compensatory time for the additional hours worked in the waning days of the session, rather than to be required to increase the legislative appropriation, salaries, keep them employed only during the period of the session, and then lay them off.

We think that the costs will be significant, and we urge the committee to consider the proposals to amend the act to give relief to the State and local governments.

Thank you, Mr. Chairman.

[The prepared statement of Edward R. Zuccaro follows:]

Prepared Statement of Hon. Edward R. Zuccaro, on Behalf of the National Conference of State Legislatures

Mr. Chairman and members of the Committee:

On behalf of the National Conference of State Legislatures, I want to thank you for this opportunity to testify on the impact of the Garcia decision.

I am Ed Zuccaro, a state representative from Saint Johnsbury, Vermont. I appear today as a spokesman for the National Conference of State Legislatures. As you probably know, NCSL is the official, national organization of the country's 7,461 state lawmakers.

I have been a member of the Vermont House of Representatives for several years and have in the past served as chairman of the House Judiciary Committee and the Joint Committee on Judicial Rules. I currently serve as the ranking minority member on the House Ways and Means Committee. I have also been active for many years in the National Conference of State Legislatures and currently serve as vice-chair of the NCSL Law and Justice Committee.

On May 10th of this year, the states represented in NCSL unanimously adopted a resolution calling on Congress to provide an exemption or limitation on FLSA coverage of states and localities. I think the unanimous adoption of this resolution was significant. It was adopted with the support of legislators of every philosophical and party affiliation in recognition of the practical problems faced by states and localities attempting to come into compliance with the act.

We believe that amendments to the Fair Labor Standards Act are necessary in three areas to accommodate the unique problems of state and local government.

FIRST, WE THINK PERSONS WHO ARE PERFORMING VOLUNTEER WORK SHOULD BE EXEMPT FROM THE ACT. FOSTER GRANDPARENT PPOGRAMS AND VOLUNTEER FIRE DEPARTMENTS ARE THREATENED BY THE RIGID FLSA DEFINITION OF VOLUNTEERS. SECOND, STATES AND LOCALITIES SHOULD BE GIVEN A REASONABLE PERIOD TO COME INTO COMPLIANCE AND SHOULD BE PROTECTED FROM ANY UNNECESSARY CIVIL LIABILITY. THIRD, STATES AND LOCALITIES SHOULD BE EXEMPT FROM THE OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT. AS YOU KNOW, SECTION 7 OF THE FLSA FORCES STATE AND LOCAL WORKERS TO ACCEPT TIME AND A HALF PAY AS COMPENSATION FOR OVERTIME WORK. THIS RIGID OVERTIME PAY RULE IS IN CONFLICT WITH THE TRADITIONAL PRACTICES OF MANY JURISDICTIONS AND RUNS COUNTER TO THE PROVISIONS OF COLLECTIVE BARGAINING AGREEMENTS AND TO THE WISHES OF MANY PUBLIC EMPLOYEES. WE THEREFORE FAVOR AN EXEMPTION FOR STATES AND LOCALITIES FROM THE SECTION 7 OVERTIME RULES OR ANY SIMILAR AMENDMENT TO THE FLSA THAT WILL PRESERVE THE NECESSARY FLEXIBILITY IN OUR SCHEDULING PRACTICES, PROTECT THE TAXPAYERS FROM SERVICE REDUCTIONS, AND GIVE PUBLIC EMPLOYEES A CHANCE TO BARGAIN ABOUT THE FORM OF OVERTIME COMPENSATION.

RETURNING TO OUR FIRST POINT, THE WAY IN WHICH THE FLSA AND ITS IMPLEMENTING REGULATIONS TREAT VOLUNTEERS IS AN EGREGIOUS MISTAKE. VOLUNTEERS WHO PERFORM PUBLIC SERVICES UNDER THE AUSPICES OF STATE OR LOCAL GOVERNMENT AGENCIES SHOULD NOT BE COVERED BY THE WAGE AND HOUR STANDARDS OF THE ACT SIMPLY BECAUSE THEY RECEIVE SOME NOMINAL COMPENSATION, CASH FOR EXPENSES, OR REASONABLE FRINGE BENEFITS IN RECOGNITION OF THEIR SERVICE.

UNDER CURRENT DEPARTMENT OF LABOR REGULATIONS, VOLUNTEER FIREFIGHTERS WHO RECEIVE EXPENSE ALLOWANCES IN EXCESS OF $2.50 PER CALL ARE COVERED BY THE ACT. THIS REGULATION COULD HAVE THE DEVASTATING EFFECT OF EXTENDING FLSA COVERAGE

OVER MANY OF THE NATION'S VOLUNTEER FIREFIGHTERS. THE VOLUNTEER STATUS OF FIREFIGHTERS OR OTHER PUBLIC SAFETY VOLUNTEERS SHOULD NOT TURN ON WHETHER THE STATE OR LOCAL GOVERNMENT HAS PAID THEIR TUITION FOR TRAINING CLASSES, SUPPLIED A UNIFORM, OR PROVIDED REIMBURSEMENT FOR OUT-OF-POCKET EXPENSES. MOREOVER, IT IS ONLY FAIR TO PEOPLE WHO VOLUNTARILY PROVIDE AN IMPORTANT PUBLIC SERVICE TO ALLOW THEM TO RECEIVE WORKMAN'S COMPENSATION BENEFITS, LIFE AND HEALTH INSURANCE BENEFITS, AND A NOMINAL SUM IN EXCESS OF $2.50 PER CALL.

SIMILAR NOMINAL COMPENSATION SHOULD BE ALLOWED VOLUNTEERS PARTICIPATING IN FOSTER GRANDPARENT PROGRAMS, IN PROGRAMS FOR RETARDED CITIZENS, IN CONSERVATION PROGRAMS, AND OTHER VOLUNTEER PROGRAMS. VOLUNTEER WORK IS A GREAT AMERICAN TRADITION. THERE IS NO NEED FOR IT TO BE UNDERMINED BY A FEW TECHNICAL PROVISIONS AND INTERPRETATIONS OF THE FLSA.

TURNING TO OUR SECOND POINT, WE BELIEVE IT IS PATENTLY UNFAIR TO SUBJECT STATE AND LOCAL GOVERNMENTS TO RETROACTIVE LIABILITY FOR BACK PAY, LIQUIDATED DAMAGES, ATTORNEYS FEES AND COURT COSTS WHEN THEY HAVE NOT HAD A REASONABLE OPPORTUNITY TO VOLUNTARILY COME INTO COMPLIANCE. AT THE VERY LEAST, CONGRESS SHOULD PROVIDE A PHASE-IN PERIOD TO ALLOW SUFFICIENT TIME FOR THESE ADJUSTMENTS, AND IN LIGHT OF THE CURRENT CRISIS IN STATE AND LOCAL LIABILITY INSURANCE, CONSIDERATION SHOULD BE GIVEN TO PERMANENTLY PROTECTING STATES AND LOCALITIES FROM JUDGMENTS FOR DAMAGES AND ATTORNEYS FEES.

STATE AND LOCAL GOVERNMENTS WERE CAUGHT UNPREPARED FOR THE GARCIA DECISION. I DOUBT THAT MANY OF US AT THE STATE AND LOCAL LEVEL, EVEN THOSE OF US WHO WERE CLOSELY FOLLOWING THE CASE, EXPECTED THE COURT TO ISSUE SUCH A SWEEPING DECISION IN GARCIA. THE EXTENSION OF FLSA COVERAGE, NOT JUST TO PUBLIC TRANSIT WORKERS

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BUT TO ALL NON-EXEMPT STATE AND LOCAL EMPLOYEES, REQUIRES MAJOR CHANGES IN COLLECTIVE BARGAINING AGREEMENTS, CIVIL SERVICE POSITION CLASSIFICATION SYSTEMS, AND PUBLIC BUDGETS. WE WERE UNPREPARED IN ADVANCE OF THE DECISION FOR SUCH A MASSIVE CHANGE-OVER, AND SINCE THE DECISION WAS HANDED DOWN MANY JURISDICTIONS HAVE FACED SERIOUS DIFFICULTIES IN ASSESSING THE EXACT NATURE AND COST OF THE CHANGES THEY ARE REQUIRED TO MAKE.

REVISING BUDGETS IS A PARTICULAR PROBLEM FOR STATES WHO DO NOT HAVE FULL-TIME LEGISLATURES. MANY LEGISLATURES MEET IN REGULAR SESSION FOR ONLY A FEW WEEKS OR MONTHS EVERY TWO YEARS. IN STATES WITH BIENNIAL BUDGETS, APPROPRIATIONS FOR THE CURRENT YEAR MAY HAVE BEEN MADE LONG BEFORE THE GARCIA DECISION. IN MUCH THE SAME WAY, THE GARCIA DECISION CAUGHT MANY STATES AND LOCALITIES IN THE MIDDLE OF THE COLLECTIVE BARGAINING CYCLE. MANY EXISTING CONTRACTS NO DOUBT CONTAIN ECONOMIC CONCESSIONS WHICH REFLECT THE ASSUMPTION THAT COMPENSATORY TIME SYSTEMS WOULD BE AVAILABLE. THERE ARE ALSO DIRECT CONFLICTS BETWEEN THE FLSA AND MANY BARGAINING CONTRACTS AND EVEN MORE AMBIGUITIES ABOUT HOW THE ACT AND EXISTING CONTRACTS CAN BE RECONCILED. AT THE VERY LEAST, IT WOULD SEEM FAIR TO PROVIDE A PHASE-IN PERIOD AND TO PROTECT STATE AND LOCAL GOVERNMENTS FROM RETROACTIVE LIABILITY.

IN ADDITION TO BARRING RETROACTIVE LIABILITY, CONGRESS SHOULD CONSIDER WHETHER IT IS APPROPRIATE TO SUBJECT STATE AND LOCAL GOVERNMENTS TO HEAVY JUDGMENTS FOR DAMAGES AND ATTORNEYS FEES. AS YOU PROBABLY KNOW, THERE IS CURRENTLY A CRISIS IN MUNICIPAL LIABILITY INSURANCE. LIABILITY INSURANCE IS NO LONGER AVAILABLE AT REASONABLE PRICES FOR MANY LOCALITIES. SOME COMMUNITIES HAVE HAD THEIR POLICIES CANCELLED. THE MAYOR AND CITY COUNCIL OF POINT ARENA, CALIFORNIA RESIGNED RATHER THAN FACE PERSONAL LIABILITY AFTER THAT SMALL

COMMUNITY'S POLICY WAS CANCELLED. OTHER COMMUNITIES HAVE FACED DEVASTATING PREMIUM INCREASES. DALLAS, TEXAS DECIDED TO SELF-INSURE WHEN FACED WITH A PREMIUM INCREASE OF OVER 1,000 PER CENT. THE CITY'S INSURANCE COMPANY SUBMITTED A BID OF $1.7 MILLION FOR NEXT YEAR'S PREMIUM COMPARED TO $157,000 FOR LAST YEAR'S PREMIUM. TO SUBJECT LOCALITIES TO JUDGMENTS FOR DAMAGES AND ATTORNEYS FEES RAISES THE PROSPECT OF EVEN HIGHER LIABILITY INSURANCE PREMIUMS. THIS POTENTIALLY HEAVY BURDEN ON OUR TAXPAYERS IS UNNECESSARY. PROSPECTIVE INJUNCTIVE RELIEF SHOULD BE SUFFICIENT TO INSURE COMPLIANCE WITH THE ACT.

OUR THIRD AND MOST IMPORTANT REQUEST IS FOR SOME RELIEF FROM THE RIGID AND BURDENSOME OVERTIME PROVISIONS CONTAINED IN SECTION 7 OF THE FLSA. STATE AND LOCAL GOVERNMENTS WILL BE FINANCIALLY PRESSED TO MAINTAIN CURRENT SERVICES WHILE PAYING TIME AND A HALF FOR MOST OVERTIME WORK AS MANDATED BY THE FLSA. THE TRADITIONAL PRACTICE IN MOST JURISDICTIONS HAS BEEN TO AWARD COMPENSATORY TIME-OFF FOR OVERTIME WORK, BUT THE FLSA ALLOWS ONLY THE MOST RESTRICTED USE OF COMPENSATORY TIME.

THE COMPENSATORY TIME OFF SYSTEM WAS WELL SUITED TO THE SEASONAL NATURE OF MANY PUBLIC JOBS. STATE FOREST FIRE FIGHTERS IN CALIFORNIA AND SNOW PLOW DRIVERS IN VERMONT WORKED INTENSELY DURING THE BUSY SEASON AND RECIEVED COMP-TIME IN THE SLACK SEASON. THE SYSTEM ALLOWED THESE WORKERS TO STAY ON THE PAYROLL YEAR ROUND. IN STATES WHICH HAVE DISTINCT SEASONS SUCH AS VERMONT, MANY EMPLOYEES PREFER TO HAVE THE TIME-OFF FOR RECREATIONAL ACTIVITIES. SNOW PLOW DRIVERS MAY WANT TO FISH IN THE SUMMERTIME.

THE COMPENSATORY TIME OFF SYSTEM WAS ALSO WELL SUITED TO THE UNPREDICTABLE NATURE OF MANY PUBLIC JOBS. POLICE OFFICERS RESPONDING TO CRIMES AND

EMERGENCIES SHOULD NOT BE WORRIED ABOUT VIOLATING PERSONNEL RULES DESIGNED TO CONTROL OVERTIME COSTS.

THE ADVANTAGES OF COMPENSATORY TIME-OFF PLANS AND THE DISADVANTAGES OF TIME AND A HALF PAY PLANS ARE WELL ILLUSTRATED BY THE EXAMPLE OF STATE LEGISLATIVE EMPLOYEES. DURING THE BUSY PERIODS OF THE STATE LEGISLATIVE SESSION, ESPECIALLY IN THE HECTIC WEEKS AND DAYS LEADING UP TO ADJOURNMENT, OUR EMPLOYEES FREQUENTLY WORK LATE AT NIGHT AND ON WEEKENDS. SEVERAL MEMBERS OF THIS COMMITTEE HAVE SERVED AS STATE LEGISLATORS AND KNOW ABOUT THE PACE OF ACTIVITY AND LONG HOURS REQUIRED. THOUGH I AM NOT AN EXPERT ON CONGRESS, I WOULD SUPPOSE THAT YOUR EXPERIENCE IS MUCH THE SAME AND THAT YOUR STAFF ASSISTANTS, SECRETARIES, AND OTHER EMPLOYEES MUST PULL LONG HOURS DURING PEAK PERIODS OF ACTIVITY. THE LEGISLATIVE PROCESS, FOR SOME REASON, SEEMS TO REQUIRE A LOG JAM OF LEGISLATION AND AN IMPENDING CRISIS TO FORCE NEGOTIATING PARTIES TO COME TO TERMS.

OUR TRADITIONAL PRACTICE IN STATE LEGISLATURES IS TO PROVIDE COMPENSATORY TIME OFF FOR OUR EMPLOYEES IN RETURN FOR THE LONG HOURS OF WORK REQUIRED DURING THE PEAK OF THE LEGISLATIVE SESSION. THIS IS A VERY SATISFACTORY ARRANGEMENT FOR US. OUR PERSONNEL COSTS ARE PREDICTABLE AND UNDER CONTROL DURING THE LEGISLATIVE SESSION. AT THE SAME TIME, WE HAVE SLACK PERIODS AFTER ADJOURNMENT WHEN OUR EMPLOYEES CAN BE GIVEN EXTENSIVE LEAVE. OUR COMPENSATORY TIME SYSTEMS APPARENTLY WILL HAVE TO BE REPLACED IN MANY CASES WITH TIME AND A HALF PAY SYSTEMS. THE EXPENSE COULD BE PROHIBITIVE. ONE ALTERNATIVE FOR CONTROLLING THE COST, WHICH ONE WOULD ENDORSE ONLY AS A LAST RESORT, IS TO HIRE STAFF FOR THE LEGISLATIVE SESSION AND THEN LAY THEM OFF AFTER ADJOURNMENT.

THE EXTENT TO WHICH STATE LEGISLATIVE EMPLOYEES ARE EXEMPT FROM THE ACT IS

UNCLEAR. THE PERSONAL STAFFS OF LEGISLATORS ARE EXEMPT, BUT IT IS UNCLEAR WHO IS ON PERSONAL STAFF. THE APPLICATION OF THE EXECUTIVE, PROFESSIONAL, AND ADMINISTRATIVE EXEMPTIONS IS SIMILARLY UNCLEAR IN THE CONTEXT OF STATE LEGISLATIVE WORK. MOST TECHNICAL, CLERICAL, AND OTHER NON-PROFESSIONAL EMPLOYEES OF STATE LEGISLATURES APPEAR TO BE COVERED. SO, AS WITH MOST OTHER STATE AND LOCAL GOVERNMENT UNITS, STATE LEGISLATURES ARE ANXIOUS ABOUT THE EFFECT OF FLSA ENFORCEMENT.

WE HAVE HEARD MANY ESTIMATES OF THE COST TO STATE AND LOCAL GOVERNMENTS OF PAYING TIME AND A HALF FOR OVERTIME WHILE RETAINING CURRENT SERVICES. SOME ANALYSTS ESTIMATE THE COST TO RANGE IN EXCESS OF $1 BILLION. GIVEN THE FACT THAT CURRENT BUDGETS FOR MANY OR MOST JURISDICTIONS WERE SET BEFORE THE GARCIA DECISION AND ARE NOT EASILY ADJUSTED UPWARD, MY BEST GUESS IS THAT MUCH OF THE COST WILL BE EXPRESSED IN THE FORM OF SERVICE REDUCTIONS. I WOULD EXPECT REDUCED HOURS AND REDUCTIONS IN WORKFORCE THROUGH ATTRITION OR LAYOFFS. I WOULD EXPECT ALSO THAT THE CAPACITY OF STATE AND LOCAL GOVERNMENTS TO RESPOND QUICKLY AND FLEXIBLY TO THE PUBLIC'S DEMAND FOR SERVICES WOULD BE DIMINISHED AS RIGID RULES RESTRICTING OVERTIME WORK ARE IMPOSED ON STATE AND LOCAL WORKERS.

WE HAVE HEARD THE "HORROR STORY" ABOUT DISTRICT OF COLUMBIA POLICE OFFICERS WHO WERE REQUIRED TO REDUCE HOURS SPENT ON A HOMICIDE INVESTIGATION IN ORDER TO AVOID EXCESSIVE OVERTIME HOURS. THAT IS AN EXTREME EXAMPLE, BUT ILLUSTRATIVE OF THE KIND OF PROBLEMS I FEAR. I AM AFRAID THAT SOCIAL WELFARE OFFICES WILL TURN AWAY CLIENTS WITH PRESSING, THOUGH NOT LIFE THREATENING, NEEDS BECAUSE IT IS FIVE O'CLOCK AND CLOSING TIME. I AM AFRAID THAT RECREATION PROGRAMS IN PARKS WILL BE DISCONTINUED BECAUSE OF THE COST OF PAYING OVERTIME TO REGULAR STAFF AND BECAUSE VOLUNTEERS ARE NO LONGER AVAILABLE. I AM AFRAID THAT A SMALL CITY WHICH

HAS MADE EVERY GOOD FAITH EFFORT TO COME INTO COMPLIANCE WILL BE SUED AND FACE A HUGE JUDGMENT FOR DAMAGES AND ATTORNEYS FEES. I AM AFRAID THAT SAME CITY MAY NOT BE ABLE TO PURCHASE LIABILITY INSURANCE. AND, FINALLY I AM AFRAID THAT STATE LEGISLATURES WHICH HAVE MADE MAJOR EFFORTS IN RECENT YEARS TO MODERNIZE AND PROFESSIONALIZE THEIR OPERATIONS WILL REDUCE THEIR STAFF SUPPORT TO ACCOMMODATE THE COST OF PAYING TIME-AND-A-HALF FOR OVERTIME WORK.

IN CONCLUSION, I WANT TO EXPRESS AGAIN MY APPRECIATION OF THIS OPPORTUNITY TO TESTIFY. I HOPE YOU SHARE OUR CONCERNS ABOUT THE COSTS AND POLICY CONSEQUENCES OF IMPOSING THE FLSA ON STATES AND LOCALITIES.

Mr. MURPHY. Thank you very much.

Ms. Anderegg.

Ms. ANDEREGG. I would like to respond to a comment the gentleman on my left made a little while ago about volunteers. I don't think the problem with the volunteers is so much they will exceed 40 hours a week, so much as the minimum wage rate will apply, and where they are on call for a long time, and where we are paying more, that is where we have the problem. But I have touched on it briefly in my statement, and thank you.

I am sure that what I have to say about my county applies to many other counties across the Nation.

Mr. Chairman, the Supreme Court's *Garcia* decision has imposed undue hardship on small and semirural areas across the Nation. The manadatory time-and-half pay requirements under the Fair Labor Standards Act will cause most of us to cut back on vital services.

I am here today to urge your support for legislation that would restore State and local control over the use of compensatory time and volunteers in our own areas.

As county executive, it is my responsibility to minimize the fiscal impact of the new mandate. We will do so by adhering strictly to the provisions of the Fair Labor Standards Act.

Our former compensatory time off policy which has worked to the benefit of both the county employees and the county, will have to be rescinded. No employee will be allowed to work in excess of 40 hours per work week.

We have no choice but to try to limit the fiscal effect of the *Garcia* decision because we simply cannot afford the additional costs. I think I heard this afternoon we are an exception, but I think we are more the rule than the exception.

We have lost $25 million of our tax base this year because of the depressed farm economy. The unemployment rate in our major city is 16.1 percent—the highest in the State.

Part of the problem can be attributed to the closing of a tannery which formerly employed 200 workers. I know you have been hearing about tannery closings, too, I am sure.

Even if we are able to avoid the payment of any additional overtime, the *Garcia* decision will necessitate a very cumbersome payroll recordkeeping process in order to comply with the "on duty"; "off duty"; "on call"; and "24-hour" duty provisions of the law. Then you can add sleep time approved and sleep time not approved, and if it is less than 24 hours or an hour more there are different regulations.

The county's determination as to "exempt" positions may differ from the Department of Labor criteria because the Department's definition is very unclear at this point. This could lead to substantial liability for us even though we are making every effort to comply.

The county subsidizes a countywide ambulance service which relies heavily on the use of volunteers. This service, which has received national recognition and acclaim, is cost effective and efficient.

However, under the provisions of the Fair Labor Standards Act, these volunteers may be deemed employees, and thereby making

the current arrangement cost prohibitive rather than cost effective. We have the 725 square miles of our area divided in six ambulance districts.

Two of the cities within the county are covered by paid city firemen, who are also the emergency medical technicians.

The remaining city, which lies approximately 20 miles from the county seat, has a contracted service which also covers part of a neighboring county. The other three districts are covered by village volunteer firemen.

The county pays an area and population subsidy and a $12.50 per call subsidy. That is $10 more than what it says in the regulation. What it says here is $2.50 per call. We pay $12.50, so I guess we have to count them as our employees.

In addition, the county also purchases an ambulance for each district every 6 or 7 years. I think that one of the villages pays 50 cents an hour to its emergency medical technicians for being on call.

So we have in this set up, we have three volunteer fire departments that have varying rates of how they do it. The county says how the ambulance will be equipped. We say how the EMT's will be trained.

We pay for their training. But we pay an area and population subsidy and $12.50 per call, and that is a different situation, and almost every volunteer organization that we have.

We have volunteers that man our elderly nutrition meal sites, I think there is six or seven in the county now, and they are compensated for their work by getting a meal.

Is that meal worth more than $2.50?

It is turkey dinner, I mean it has the works. Plus the transportation to those sites.

Are you going to shut down our Elderly Nutrition Program by saying that these people are now employees of the county?

We have volunteers in almost every operation that we do; and our deputy sheriffs, we have volunteers who give the sheriff's department backup, and when they volunteer we pay them, I think the rate now is at about $5 per hour.

But if they were working a very serious murder case or something, they could very well work more than 40 hours per week.

You know, we have almost as many instances as the Department of Labor has for regulations that they haven't written yet, and I guess that is probably an unlimited number.

This countywide ambulance service I was talking about before I departed from the text, costs us $68,000 per year, plus the outlay for the ambulance. The advantage to this type of operation is that having an ambulance nearby shortens the run to the hospital.

Even if we could afford to contract for countywide service, it would have to be based in the city and wouldn't alter the fact that Fond du Lac is a considerable distance from outlying villages. It is certainly better for those residents to have an ambulance based in the village rather than to send one from the city of Fond du Lac.

The present regulations say that all hours engaged in work, waiting to be engaged in work, or actually at work, whether or not they were authorized must be compensated. Does that mean that the employee whose husband drops her off a half-hour early must be

told that she has to wait somewhere else instead of coming to her office.

She comes to the office, sometimes she waters her plants, but certainly she is not authorized to work before 8 o'clock. But she comes early for her convenience.

The Fair Labor Standards Act also provides that exempt status salaried employees, who meet the executive, administrative, and professional exemptions, cannot be docked for partial day absences. This runs contrary to Fond du Lac County's current policy accountability for time worked.

If you work for us, time away from work must be covered by compensatory time or vacation time, in order to receive full salary. That is not according to the regulations either.

The consideration that local governments provide services to the public which fluctuate according to the activity being performed, seems to have been overlooked. For example, employees in the county clerk's office may work past midnight on an election night. Employees in the county treasurer's office work overtime when collecting taxes and recording payments. Most of our county committee meetings are after hours, or at 7:30 in the morning because our county supervisors are part-time elected officials with full-time employment.

Staff attendance at those meetings has been very helpful to the decisionmakers. Many of our social service's clients come in after hours. Our nurses vaccinate people's children at night, and teach nutrition classes at night; we train our volunteer emergency medical technicians at night; and assist our 4-H leaders at night.

It is not unusual for the entire finance department to work extra hours at budget time. Juvenile intake workers when the juveniles are detained, whatever the hour.

I am attaching the Department of Labor instructions for dealing with fluctuating hours and fixed salaries so you will understand the nightmare with which we will have to contend.

The kinds of services that counties are required to perform by Federal and State law are people-related. We serve many single-parent families, as well as families where both parents work. It has been our policy in the past to provide services to our clients when it is convenient for them.

Our employees have been allowed to bank the extra hours they work, up to 80 hours per year, and take the compensatory time off when it was most convenient for them. Staff members have been eager to cooperate because this policy has allowed them to take an extra week's vacation, attend school functions with their children, take an afternoon off to go fishing, if that is what they want, attend graduate school, take extra funeral leave—whatever they need as long as the time off has been earned, and approved by their immediate supervisors.

In the 4½ years I have been county executive, I have very carefully cultivated the flexible work schedule which is possible with our current compensatory time policy. I believe that it contributes enormously to our productivity and to the enthusiasm we bring to the workplace.

Public sector jobs require a great deal of patience, our employees value the opportunity to get away from work occasionally without having to utilize vacation time.

We employ a lot of women who have families to consider. The time demands of our functions vary a great deal. Our employees consciously trade the lower pay, generally, for the security and flexibility of county employment schedules which allow them a healthier family interaction.

The lower pay generally is in the social services, in the middle management professional groups, not in the union covered institutions contracts. The people that work in our hospitals are paid more than the private sector.

You heard earlier from some of the people, union employees, we are being treated as second-class citizens. I think that before you make that kind of a judgment you should compare what the private sector pay is, those same jobs in that same community, and you will see their definition of second-class citizen may not be exactly what is there.

And I read from part of the statement from the AFSCME people, I think, and they said, is it fair to extend the protection to one-half of the Nation's trash collectors?

It has been my experience that the private sector trash collectors are cheaper than public sector trash collectors, the same for hospital workers. I don't know about any private sector owned water plant, but I think in—and certainly they are beginning to contract out public safety, and a lot of people claim it is cheaper. I would hate to have to do that, but I don't think our employees have really been second class.

Another thing that I noticed in all of this testimony this afternoon was that the people who were often testifying for the unions were not testifying for their own areas. They were testifying for some other area where there might exist an abuse, and that bothers me.

You know, I don't really think that any abuse of these provisions exists in my area. And I am willing to talk about that.

But, you know, I have a little problem with the volunteers, and I guess that occurs here because there seems to be no point in serving the particular community.

I would be remiss if I did not share with you—no, I guess I skipped somethng that is important to me.

Compensatory time has been bargained into our contracts by our union members. It is a part of our union contracts. We will have to rework those contracts to comply with the act.

To avoid paying time-and-a-half overtime pay, the Fair Labor Standards Act requires us to force our employees who work overtime to take time off within the same work period that it is earned. Instead of allowing them to plan the time off when it is most beneficial to them, we will have to make them take it when it is most convenient for our taxpayers—in order to avoid additional costs.

I can choose to have the county collection people take that time off during that work week, even if there is nothing going on at home that is going to make that time off of any benefit to them, and I think this is ridiculous. It would be much better for them to be able to plan that compensatory time.

And you heard even the union representatives of law enforcement tell you how important it was to them. And one of the reasons is that these are high stress occupations, they need that time, they need to get away from it so they can come back and be civil.

I would be remiss if I did not share with you the concern of a town chairman who came to see us last week to see if we could help him with the problem his township will have with the *Garcia* decision. The town has one employee, who is paid $17,000 per year to take care of whatever work the township requires. The employee has a number of tasks, most of which do not require overtime, except when he plows the town roads in the winter, when he works until the roads are clear. We searched the Fair Labor Standards Act in vain for some exemption which might apply to municipalities with one exception.

We found the one that said fine for fire department. His only apparent recourse is to establish an hourly wage, liberally estimate the amount of time next year's snowfall will require to remove, and after the winter is over, try to adjust the workweeks so the compensation will add up to $17,000 annually.

I sincerely hope that you will be able to legislate something for all of us which will accomodate our needs better than our present alternatives.

Applying the *Garcia* decision to local governments will create additional costs and cumbersome paperwork for us and will not, in most cases, provide additional pay for employees. The people who are supposed to benefit from this legislation will be denied the opportunity of selecting time off when it is most convenient for them.

Finally, the clients we serve will lose the additional hours of service we have been able to provide under our former compensatory time off system.

We think that what we had before the *Garcia* decision was far superior to what this mandate forces us as employers and employees and receipients of services, and as taxpayers.

We respectfully urge you to support legislation which would: exempt State and local employees from the overtime provisions of the Fair Labor Standards Act; exempt volunteers from the minimum wage and overtime provisions of the act; and make these exemptions retroactive to February 19, 1985. This will allow us the flexibility we need to respond creatively to the demands for services from our clients and the demands for economy from our taxpayers.

Mr. Chairman, that concludes my testimony. I would like to commend you for holding these hearings and focusing national attention on perhaps the most burdensome problem facing county governments.

Thank you for the opportunity to testify.

I would be happy to answer any questions that you or any of the other members may have.

[The prepared statement of Anita Anderegg follows:]

PREPARED STATEMENT OF HON. ANITA ANDEREGG, ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES*

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to testify today on the effect of the Supreme Court's *Garcia* decision (*Garcia* v. *San Antonio Metropolitan Transit Authority*) on counties in semirural areas. I am Anita Anderegg, county executive of Fond du Lac County, WI. It gives me a great pleasure to testify not only on behalf of my county but also on behalf of the National Association of Counties. Fond du Lac County has a population of 89,000 and contains 3 small cities, 9 villages and 21 townships. Since 2,708 of the Nation's 3,106 counties have a population less than 100,000, I am sure that what I have to say about my county applies to many other counties across the Nation.

Mr. Chairman the Supreme Court's *Garcia* decision has imposed undue hardship on small and semirural areas across the Nation. The mandatory time-and-a-half pay requirements under the Fair Labor Standards Act will cause most of us to cut back on vital services. I am here today to urge your support for legislation that would restore State and local control over the use of compensatory time and volunteers in our own areas.

As county executive, it is my responsibility to minimize the fiscal impact of the new mandate. We will do so by adhering strictly to the provisions of the Fair Labor Standards Act. Our former conpensatory time-off policy which has worked to the benefit of both the county employees and the county will have to be rescinded. No employee will be allowed to work in excess of 40 hours per work week. We have no choice but to try to limit the fiscal effect of the *Garcia* decision because we simply cannot afford the additional costs on the payroll. We have lost $25 million of our tax base this year because of the depressed farm economy. The unemployment rate in our major city is 16.1 percent—the highest in the State. Part of the problem can be attributed to the closing of a tannery which formerly employed 200 workers.

Even if we are able to avoid the payment of any additional overtime, the *Garcia* decision will necessitate a very cumbersome payroll recordkeeping process in order to comply with the "on duty," "off duty," "on call," and "24 hour" duty provisions of the law. The county's determination as to "exempt" positions may differ from the Department of Labor criteria because the Department's definition is very unclear at this point. This could lead to substantial liability for us even though we are making every effort to comply.

The county subsidizes a countywide ambulance service which relies heavily on the use of "volunteers." This service, which has received national recognition and acclaim, is cost effective and efficient. However, under the provisions of the Fair Labor Standards Act, these "volunteers" may be deemed "employees", thereby making the current arrangement cost prohibitive rather than cost effective. We have the 725 square miles of our area divided into six ambulance districts. Two of the cities within the county are covered by paid city firemen.

The remaining city, which lies approximately 20 miles from the county seat, has a contracted service which also covers part of a neighboring county. The other three districts are covered by village volunteer firemen. The county pays an area and population subsidy and a $12.50-per-call subsidy. In addition, the county also purchases an abulance for each district every 6 or 7 years. I think that one of the villages pays 50 cents an hour to its emergency medical technicians for being on call.

This countywide service costs the county $68,000 per year, plus the outlay for the ambulances. The advantage to this type of operation is that having an ambulance nearby shortens the run to the hospital. Even if we could afford to contract for countywide service, it would have to be based in the city and wouldn't alter the fact that Fond du Lac is a considerable distance from outlying villages. It is certainly better for those residents to have an ambulance based in the village rather than to send one from the city of Fond du Lac.

The present regulations say that all hours engaged in work, waiting to be engaged in work, or actually at work, whether or not they were authorized must be compensated. Does that mean that the employee whose husband drops her off a half-hour early must be told that she has to wait somewhere else instead of coming to her office?

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*The National Association of Counties is the only national organization representing county government in the United States. Through its membership, urban, suburban and rural counties join together to build effective, responsive, county government. The goals of the organization are to: Improve county government; serve as the national spokesman for county government; act as a liaison between the Nation's counties and other levels of Government; achieve public understanding of the role of counties in the Federal system.

The Fair Labor Standards Act also provides that exempt status salaried employees, who meet the "executive," "administrative," and "professional" exemptions, cannot be "docked" for "partial day" absences. This runs contrary to Fond du Lac County's current policy of accountability for time worked. If you work for us, time away from work must be covered by compensatory time or vacation time in order to receive full salary.

The consideration that local governments provide services to the public which fluctuate according to the activity being performed seems to have been overlooked. For example, employees in the county clerk's office may work past midnight on an election night. Employees in the county treasurer's office work overtime when collecting taxes and recording payments. Most of our county committee meetings are after hours, or at 7:30 in the morning because our county supervisors are part-time elected officials with full-time employment. Staff attendance at those meetings has been very helpful to the decisionmakers.

Many of our social services clients come in after hours. Our nurses vaccinate people's children at night and teach nutrition classes at night. We train our volunteer emergency medical technicians at night, and assist our 4-H leaders at night. It is not unusual for the entire finance department to work extra hours at budget time. Juvenile intake works when the juveniles are detained, whatever the hour. I am attaching the Labor Department's instructions for dealing with fluctuating hours and fixed salaries so you will understand the nightmare with which we will have to contend.

The kinds of services that counties are required to perform by Federal and State law are people-related. We serve many single parent families, as well as families where both parents work. It has been our policy in the past to provide services to our clients when it is convenient for them. Our employees have been allowed to "bank" the extra hours they work, up to 80 hours per year, and take the compensatory time off when it was most convenient for them. Staff members have been eager to cooperate because this policy has allowed them to take an extra week's vacation, attend school functions with their children, take an afternoon off to go fishing if thats what they want, attend graduate school, take extra funeral leave—whatever they need as long as the time off has been earned, and approved by their immediate supervisors.

In the 4½ years I have been county executive, I have very carefully cultivated the flexible work schedule which is possible with our current compensatory time policy. I believe that it contributes enormously to our productivity and to the enthusiasm we bring to the workplace. Public sector jobs require a great deal of patience. Our employees value the opportunity to get away from work occasionally without having to utilize vacation time.

We employ a lot of women who have families to consider. The time demands of our functions vary a great deal. Our employees consciously trade the lower pay generally, for the security and flexibility of county employment schedules which allow them a healthier family interaction.

To avoid paying time-and-a-half overtime pay, the Fair Labor Standards Act requires us to force our employees who work overtime to take time off within the same work period that it is earned. Instead of allowing them to plan the time off when it is most beneficial to them, we will have to make them take it when it's most convenient for our taxpayers—in order to avoid additional costs.

I would be remiss if I did not share with you the concern of a town chairman who came to see us last week to see if we could help him with the problem his township will have with the *Garcia* decision. The town has one employee, who is paid $17,000 per year to take care of whatever work the township requires. The employee has a number of tasks, most of which do not require overtime, except when he plows the town roads in the winter, when he works until the roads are clear. We searched the Fair Labor Standards Act in vain for some exemption which might apply to municipalities with one employee. His only apparent recourse is to establish an hourly wage, liberally estimate the amount of time next year's snowfall will require to remove, and after the winter is over, try to adjust the workweeks so the compensation will add up to $17,000 annually.

I sincerely hope that you will be able to legislate something for all of us which will accommodate our needs better than our present alternatives.

Applying the *Garcia* decision to local governments will create additional costs and cumbersome paperwork for us and will not, in most cases, provide additional pay for employees. The people who are supposed to benefit from this legislation will be denied the opportunity of selecting time off when it is most convenient for them. Finally, the clients we serve will lose the additional hours of services we have been able to provide under our former compensatory time off system.

We think that what we had before the *Garcia* decision was far superior to what this mandate forces upon us as employers, as employees, as recipients of services, and as taxpayers.

We respectfully urge you to support legislation which would: Exempt State and local employees from the overtime provisions of the Fair Labor Standards Act; exempt volunteers from the minimum wage and overtime provisions of the act; and make these exemptions retroactive to February 19, 1985. This will allow us the flexibility we need to respond creatively to the demands for services from our clients and the demands for economy from our taxpayers.

Mr. Chairman, that concludes my testimony. I would like to commend you for holding these hearings and focusing national attention on perhaps the most burdensome problem facing county governments. Thank you for the opportunity to testify. I would be happy to answer any questions that you or any of the other members may have.

HANDBOOK FROM THE U.S. DEPARTMENT OF LABOR, EMPLOYMENT STANDARDS ADMINISTRATION, WAGE AND HOUR DIVISION

WH PUBLICATION 1459, MAY 1985

Fixed salary for fluctuating hours.—The regular rate for an employee whose hours of work fluctuate from week to week, who is paid a stipulated salary with the clear understanding that it constitutes straight-time pay for all hours worked, whatever their number and whether few or many, will vary from week to week. The employee's regular rate is determined each week by dividing the salary by the number of hours he or she worked in that week. The regular rate cannot, of course, be less than the applicable minimum wage. Since the employee has been paid his or her straight-time compensation, he or she must receive additional overtime pay for each overtime hour worked in the week at less than one-half the regular rate. Take the example of an employee who works no more than 50 hours and is compensated on a fluctuating workweek basis at a weekly salary of $200.00. If during the course of four weeks the employee works 40, 44, 50, and 48 hours, the employee's regular rate in each of these weeks is $5, $4.55, $4, and $4.17. Since the employee has been paid his or her straight-time pay for all hours worked, only additional half-time pay is due. The employee's pay would be computed as follows: for the first week the employee is due $200.00; for the second week the employee is due $209.10 (($200 + (4 hours x $2.275)); for the third week the employee is due $220.00 ($200 + (10 hours x $2.00)); for the fourth week the employee is due $216.68 ($200 + (8 hours x $2.085)).

The Wage and Hour Division has developed a "coefficient" table for computing extra half-time for overtime. This table may be used for computing overtime on piecework, bonuses, commissions, or fixed salaries for varying hours. Form WH-134 has been prepared for use by employers who may find the coefficient table to be a time-saver when computing the extra half-time for hours worked over 40 in a workweek.

Mr. MURPHY. Thank you very much. I am going to ask you a question that as a lawyer or as a witness I never wanted to answer.

Can you tell me, the section of the law or the section of the regulations which you interpret as eliminating these volunteers that you are so concerned with?

Do you have that in front of you?

Ms. ANDEREGG. I have several things people keep giving us we are supposed to read. What this is, it says NLC special report special, sector overtime pay. The section on volunteers, it says individuals engaged in fire protection or law enforcement activities on a volunteer basis will be treated as employees for purposes of FLSA if they are paid more than a nominal amount——

Mr. MURPHY. May I stop you there and go back to what you first stated. You have cited volunteers who serve as guardians, who serve as den mothers, who serve as social workers, but that section of the FLSA covers volunteers engaged in public safety activities obviously does not apply to them.

Ms. ANDEREGG. But it does to our ambulance. It is that ambulance thing because it is provided by fire. And we do pay that $12.50 per call subsidy, plus an area and population subsidy, and what it says here is in excess of $2.50 per call.

Mr. MURPHY. Or actual transportation costs if you will see further on in the section, actual expenses involved. And no record need be kept of the costs.

Ms. ANDEREGG. You aren't telling me not to keep a record on the costs?

Mr. MURPHY. That is what the regulations say.

Ms. ANDEREGG. Oh.

Mr. MURPHY. They were written before I got here. I want to assure you that. I am not trying to trick you, but I am having difficulty understanding the problems with volunteerism under the FLSA this is the first time it has reared its great head here today at the hearing, and I am going to have to sit down and read the act over again unless you are able to provide me with those troublesome sections.

Mr. ZUCCARO. We will try to submit to the committee references to the sections——

Mr. MURPHY. How do volunteers get into violations of the FLSA in the first place if they are true volunteers? I would suspect in Vermont and Wisconsin and I represent some of those counties you are talking about, of less than a hundred thousand people, when we have volunteer firemen and auxiliary police who serve as volunteers, they don't charge anything. They work as volunteers, they raise their money from assorted causes, and they serve as volunteers in the community.

The tricommunity ambulance service does the same thing in my area. These are volunteers, they are not connected with Government at all. But must have a different setup than we have, but when we have a volunteer ambulance service that is what they are.

Ms. ANDEREGG. You don't subsidize it to any extent?

Mr. MURPHY. No. We are pretty lucky.

Ms. ANDEREGG. Our villages are so small——

Mr. MURPHY. Our communities do this. They will subsidize the fire department, or the ambulance service to the extent that each year in their appropriation process they will say, well, let's give the ambulance service, *x* number of dollars; or let's give the fire department enough money to buy a new hose. But they do not remove them from the scope of being volunteers.

I think you have to stretch your mind pretty far to take a volunteer and put them under the Fair Labor Standards Act.

You have to stretch your imagination tremendously far, and I want to stretch mine that far. I don't want this to occur, I have communities as you do, and Mr. Petri, of course, as you know does, and we do not want volunteers covered under the Fair Labor Standards Act.

We are going to address the comp time problem if it exists. But I think what we are asking of you is, don't say there is a wolf at the door without describing the wolf. I mean to say, if volunteers are included under the act, tell us, don't just tell us there are problems and you can't define or can't point them out.

Ms. ANDEREGG. You could chase them away if you would exempt all of our wolves for us.

Part of my problem is trying to read these regulations, and I have studied them and studied them and studied them——

Mr. MURPHY. We can chase away the supposed wolf at the door if we would exempt all wolves.

Ms. ANDEREGG. It wouldn't be the first legislation you have passed that had done that.

Mr. MURPHY. I wasn't here when this act was put on the book Mayor Koch was.

Ms. ANDEREGG. He is not going to my version of heaven. Anyway, the problem we have in our small communities is that we do try to create solutions to the problems that may be peculiar to us, and what this, I think, is a straitjacket, so that if we are liable, if we are found to be in willful violation, we can be fined $10,000, and go to jail.

And if they get damages in court it is double damage. It is extremely punative.

Mr. MURPHY. You are the county executive. Your county courthouse must be a lot different than mine. I have one of those counties of 100,000 people.

My county people, the clerks office, they will go to work at 9 o'clock in the morning and by 4 o'clock you couldn't get in that door unless you were the county executive with a key.

Ms. ANDEREGG. That is not true in my county.

Mr. MURPHY. The election board, 2 days a year they do work overtime. They work on into the evening, and they give them comp time, sometimes the next week.

You are able to give comp time within a 7-day pay period. If the person in the registration office wants to work until 9 o'clock, or has to work until 9 o'clock, for night voter registration, you can give them next Friday afternoon off if you want to make up for extra hours worked. Fair Labor Board Standards permits that.

I am trying to get a better picture in my mind of your specific situation. What office in your courthouse works more than 40 hours in a 7-day period?

Ms. ANDEREGG. It depends what is going on. In the treasurer's office it might go on for a couple weeks. We have divided payments on county property taxes, and the last couple weeks in July, working more than 40 hours per week. The problem with the comp time in giving that up—and I have already figured out this is one way I can do that. But for the employee, taking Friday afternoon——

Mr. MURPHY. If we amend the comp time section, as I asked the policeman here a little while ago, if we permit comp time beyond a maximum number of fair labor standards hours; does that solve the problem?

Ms. ANDEREGG. No, it wouldn't help it unless we could use it, that we didn't have to use it within that workweek. Our social workers work 40 hours.

Mr. MURPHY. Four weeks.

Ms. ANDEREGG. We might be able to do it with 28 days.

Mr. MURPHY. Or a 2-week period.

Ms. ANDEREGG. The law enforcement, institutional people will work 40 hours, so we don't have GAP time, that we do have in some of the other offices.

Mr. MURPHY. The act didn't hit impact on the social worker. In the case of the policeman or the fireman, the act doesn't impact until they have 43 hours or 53 hours respectively.

Ms. ANDEREGG. But part of our problem is the large number of social workers that we have there, and they are working odd hours, because it accommodates our clients. And they are perfectly willing to work in January and February, giving out fuel, you know, interviewing people that need fuel, because they know that when the work slacks off in the summertime they can go fishing.

And it is that kind of choice that has made it a very good thing for them and something they would hate to lose.

Mr. MURPHY. I appreciate that.

Mr. Petri?

Mr. PETRI. Thank you.

I just want to observe that this worry about drying up volunteers and complicating it, is not an idle one. Let me give an example from an unrelated area. I don't think it is so much because of Federal legislation as, perhaps, State legislation, but I know in your own State of Wisconsin, with nursing homes we had many organized by religious orders on a community basis, and then there was a worry that somehow people in nursing homes required to work were being taken advantage of, and as a result it became illegal to have people resident in a nursing home do many things in the nursing home, and that has caused a lot of harm. It may have been appropriate in a few for-profit cases, where people were, in fact, being exploited, but painting with a broad brush has been very harmful in many others where people were looking to feel useful and contribute to their fellow human beings as long as they were able to. They are not being allowed to do that now.

So this can happen. It is not an idle worry. I am curious, Mr. Zuccaro, about the unanimity of the National Council of State Legislators Resolution.

Was this debated or passed in a pro forma way?

Is there no one who felt otherwise?

How could something that seems as controversial here at this hearing, although it is always happening down the road, or in some other jurisdiction, be done unanimously by the national council when it is Republicans, Democrats, anyone across the board, and you are supposedly going to step on some pretty important toes?

Mr. ZUCCARO. I can say I have the resolution in front of me and it was adopted by unanimous vote at the May 10 meeting.

Mr. PETRI. Was anyone there?

Mr. ZUCCARO. I was at the last day of the Vermont legislative session. One of those 18-hour days, and I don't recall.

I am informed by the staff person from the Law and Justice Committee that it was adopted unanimously by the Pensions Committee, appeard on the consent calendar without objection, and that no objection has been raised since its adoption, nor was a request made for reconsideration of the position at the annual meeting in Seattle.

Mr. PETRI. Was it a representative sample of both political parties?

Mr. ZUCCARO. Absolutely.

Mr. PETRI. Is this usual; or are all your resolutions adopted unanimously?

Mr. ZUCCARO. That is not usual.

Mr. PETRI. Did people not address it or understand it?

Mr. ZUCCARO. I assume people fully understand it. The Pensions Committee is one of the standing committee's of the State and Federal Assembly of the National Conference, and that committee obviously is made up of wide spectrum of political persuasion, as is the entire organization.

And any—I can't recall the exact number, but it is a small number that would have been required to petition to have it removed from the Consent Calendar, and it could not have gotten on the Consent Calendar if it had not had a substantial majority of the Pensions Committee. And I am advised the Pensions Committee was unanimous in its endorsement.

Mr. PETRI. It just struck me because I have been getting letters and resolutons from county boards and mayors, and so on, and they keep using this word "unanimous," and I know some of the county boards that have been voting unanimously on this, and I know they have members who are local officials in organized labor, and who, in fact, are very conscious of trying to protect and enhance individuals quality of life and income, rather than to detract from it, and yet, they have been joining in this unanimous vote.

So I guess you are in line with that. It is just an observation.

Do you have any reaction to our adopting some sort of a resolution that would give us further time to study the impact of it?

Do you think it would be better to go ahead and let this October 15 deadline pass and then see if there are areas where it should not be applied?

Or should we try to delay imposition further and then see if there are areas where it should be applied?

Do you have any guidance or comment on what approach Congress should be taking at this juncture?

Mr. ZUCCARO. I would say, at a point, if committee were able to resolve the questions concerning the issues that we have raised by the deadline in October, we would be pleased to have you do so.

If that becomes not possible, I guess my second position would be that we would prefer to see you give some extension to the date of effective enforcement to give time to work out some compromise.

Ms. ANDEREGG. I think it would be wise to delay it because, frankly, I don't see how you can clean up all this in the very short time between now and the 15th of October.

I would like to see the delay at least 6 months, and possibly a year; and maybe you could get the Department of Labor to get out some regulations that would answer some of the concerns that we have by either lengthening the work period or doing whatever, saying volunteers don't come under this——

Mr. MURPHY. That would define volunteers.

Ms. ANDEREGG. Yes. And maybe if we had a chance to react to that, if we have a case that might not seem to apply, so that you get us all covered with the same blanket at the same time.

But that to me would be much wiser thinking I think than trying to address what you have heard today about comp time.

It works differently in every territory, almost. But we all like it, and we all use it, and maybe if we have a little time we can get our employees, who would be very upset, like the Milwaukee Police, if it were taken away, to get in contact with you and people from your own districts. Because I think it is a benefit to them.

And what this decision has done is remove that benefit for public employees who thought it was a benefit. And for what?

Mr. MURPHY. I think you see our dilemma, this is a very complicated matter, and the Department of Labor is giving us very little time to work on it. To this point the Secretary of Labor has not been willing to come up here to meet with us. If he will entertain our invitation because we are looking for some advise and guidance from him, too.

Thank you very much. We appreciate your testimony.

Mr. ZUCCARO. Thank you, Mr. Chairman.

[Whereupon, at 4:35 p.m., the hearing adjourned.]

[Additional material submitted for the record follows:]

CONNECTICUT CONFERENCE OF MUNICIPALITIES • 956 CHAPEL STREET, NEW HAVEN, CONNECTICUT 06510 PHONE (203) 772-2189

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September 17, 1985

Mr. Gene Rossi
Legislative Assistant
State of Connecticut
Washington Office
444 North Capitol Street, N.W.
Suite 417
Washington, D.C. 20001

Dear Mr. Rossi:

As you requested, enclosed is the Connecticut Conference of Municipalities' analysis of the impact of the Garcia decision on Connecticut cities and towns.

As you can see, this decision will have an adverse impact on municipalities in Connecticut.

CCM joins the National League of Cities and other groups in supporting interim legislation that will ensure immediate short-term relief for cities and towns as well as permanent legislation that will comprehensively address the problems caused by the Garcia decision.

The interim measure is an amendment to the appropriations bill for the Departments of Labor, Health and Human Services, and Education for fiscal year 1986. It will be offered by Rep. John E. Porter on September 26. This measure would preclude DOL from bringing enforcement actions against cities and towns prior to March 31, 1986, and would also prevent DOL from imposing retroactive liability for failure to comply with the FLSA prior to March 31, 1986.

Please feel free to call me or Mary Sessel if you have any questions.

Sincerely,

James J. Finley, Jr.

James J. Finley, Jr.
Legislative Services Director

Enclosure

Municipal Personnel / Labor Relations
BULLETIN

CONNECTICUT CONFERENCE OF MUNICIPALITIES • 956 CHAPEL STREET NEW HAVEN, CONNECTICUT 06510 PHONE (203) 772-2168

August 30, 1985, Number 85-4

Impact of the FLSA on Connecticut Municipalities: Major Issues

As a result of the U.S. Supreme Court's recent ruling in *Garcia v. San Antonio Metropolitan Transit Authority*, the provisions of the federal Fair Labor Standards Act (FLSA) are now applicable to municipalities. The U.S. Department of Labor (DOL) established April 15, 1985 as the effective date for the application of FLSA wage and hour requirements to local governments as required by *Garcia*.

However, DOL will defer until October 15, 1985 investigations and related enforcement activities under the FLSA with respect to local employees engaged in traditional governmental functions of employees of local mass transit systems. In short, DOL will take no action against municipal employers who are in compliance* with FLSA by October 15. Of course, individual employees can sue at any time to remedy FLSA violations.

Should DOL act against a municipality on or after October 15, DOL could ask for the payment of back wages for hours worked on or after April 15.

Many of FLSA's minimum wage, overtime, and recordkeeping provisions are already enforced in Connecticut law. However, it appears that Connecticut cities and towns will be most affected by FLSA's overtime pay provisions.

It is important to note that FLSA requirements are minimum requirements, superseding less stringent provisions in state statutes and collective bargaining agreements. For example, contract provisions or employment practices allowing employees to accrue compensatory time off in lieu of overtime cash payments are not permitted under FLSA requirements. The FLSA does not, however, prohibit states or municipalities from enacting, through statute or contractual agreement, more stringent requirements than those contained in the Act.

The following CCM outline of the impact of the FLSA on Connecticut cities and towns highlights those municipal employment practices which will most likely be affected by the Act's requirements. This outline is based on the best information available to CCM from federal and state agencies, local personnel practitioners, labor relations attorneys, and other sources. It is no substitute for a municipality's own familiarity with the Act and its regulations, and is not intended to give legal advice to individual cities and towns. A bibliography of sources is attached.

The U.S. Department of Labor has established a toll-free hotline to answer FLSA compliance questions from municipal employers: 1-800-233-3572. Municipal officials can also receive assistance directly from DOL's Hartford office: 722-2660.

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* Though DOL is currently refining its enforcement guidelines, "compliance" may be interpreted as requiring municipal employers to reimburse all eligible employees retroactive to April 15, 1985.

I. What municipal employees are affected by any or all FLSA provisions?

Nearly all municipal employees are covered by the FLSA, with the following exceptions:

1. Elected officials, legal advisors, and policy-making political appointees are exempt from all FLSA provisions. Personal staff of elected officials are also exempt from all FLSA provisions; however, their status under Connecticut minimum wage and overtime laws depends on individual employment circumstances and cannot be generalized.

2. Executive, administrative, professional and certain recreational employees are exempt from FLSA's minimum wage and overtime pay requirements.

3. Employees of fire or police departments that employ fewer than five firefighters or police officers, respectively, are exempt from FLSA's overtime pay provisions.

4. Bona fide volunteers motivated by charitable or civic concerns are not considered employees under FLSA.

5. Volunteer firefighters are not considered employees under FLSA if they are paid no more than $2.50 per call (even if incidental expenses are paid).

   However, minimum wage and overtime provisions of the FLSA would be applicable to those volunteer firefighters who are paid in excess of $2.50 per call by a municipality unless the municipality can show that the volunteers incurred actual expenses in excess of $2.50.

6. Municipalities can hire bona fide independent contractors who are not employees, and such local governments are not responsible for FLSA violations.

II. Under FLSA, what activities previously unregulated by federal or Connecticut law must now be considered hours worked?

Following are some of the activities in Connecticut which appear to be most affected by the FLSA requirements.

1. Time worked in neighboring jurisdictions by non-volunteer, municipal firefighters and police officers in conjunction with a mutual aid agreement. The municipal employer must treat this time as hours worked for purposes of calculating overtime.

   Volunteer firefighters who are considered "employees" of a municipality under the FLSA (see I.5. above) must be paid for additional hours worked in responding to a fire in a neighboring jurisdiction with which the employer has a mutual aid agreement.

2. Unauthorized time worked by an employee outside his normal shift. If anyone at the level of immediate supervisor or higher is or should be aware that an employee is coming in early, working late, working through lunch, or working at any other time outside his normal shift, the employee's "volunteered" time must be considered hours worked and compensated for accordingly.

   One way for an employer to try to prevent this from happening is to issue written rules stating that no employee may start work before the appointed time, work through lunches, or work past the appointed time, without prior written authorization. It is important for the employer to make sure supervisors enforce such rules.

3. On-call time (time when employee is restricted as to what he can do or where he can go). For example, a municipal employer cannot pay a police officer a flat rate for a court appearance unless that payment is at least equivalent to what would otherwise be due using the officer's normal hourly rate.

4. Hours spent by an employee in training required by the employer.

5. Rest periods (e.g., "coffee breaks") of short duration, 5 minutes to 20 minutes.

III. What other FLSA changes will increase municipal overtime payments to employees?

Following are some of the required changes which appear to be most significant for Connecticut municipalities.

1. Establishment of maximum number of non-overtime hours public safety officers can work during any allowable work period. Under FLSA, a non-exempt, covered employee who works in excess of 40 hours per week is entitled to overtime compensation at a rate of time and a half. However, section 7(k) of the Act provides a partial exemption from this requirement for public safety officers. It allows the employer to choose, with due notice to the employees, a 7- to 28-day work period; each work period has its own level of maximum non-overtime hours which an employee can work, and the levels differ for police officers and firefighters. As it presently stands, firefighters may work up to 212 hours in a 28-day period before any overtime is due. Police officers may work up to 171 hours in a 28-day period before any overtime is due. Similar ratios can be used if work periods less than 28 days are chosen.

   Generally, those employees of police and fire departments who do not have law enforcement and firefighting responsibilities, respectively, (e.g. dispatchers) are not eligible for this partial exemption from overtime requirements.

2. Compensatory time restrictions. Under Connecticut law, compensatory time ("comp. time") for non-public safety employees is generally forbidden. It can be used only if taken during the same workweek in which the extra hours were worked. Comp. time for public safety employees, however, is currently unrestricted. FLSA requirements continue these comp. time restrictions for non-public safety employees but also include public safety officers. FLSA requirements allow comp. time to be used for such officers only if taken during the same workweek (or 7- to 28-day work period for public safety officers operating under the 7(k) exemption) in which the extra hours were worked. Consequently, nearly all overtime must be compensated for in cash. This provision will hit expecially hard in certain police and fire departments, which have relied heavily on comp. time in the past.

   One exception to this requirement that comp. time be taken in the same work period may arise from a 1973 federal district court case. *Brennan v. State of New Jersey* allowed comp. time to be granted during a pay period as long as it is compensated by giving one and one-half hours of comp. time for every one hour of overtime worked. A number of experts, however, caution municipal employers not to rely on this ruling.

3. Liability of the municipality for overtime pay when police officers work municipally-mandated special duty assignments for second employers. For example, when the municipality, by an ordinance or any other method, requires that another employer hire a police officer to perform work, the municipal employer will be liable for overtime pay on the basis of the total hours of work for the two jobs (the regular police work and the special assignment work).

4. Employees holding two municipal jobs which total more than 40 hours per week will have to be paid overtime wages for the excess hours. For example, an employee who works 35 hours per week as a garage mechanic and 15 hours per week as a custodian -- a total of 50 hours per week -- must be paid for 10 hours of overtime per week. (The Connecticut Department of Labor has interpreted state law to require this.)

5. Inclusion of merit pay, career incentives pay, longevity pay, shift differentials, and regular and recurring bonuses in the computation of any overtime rate. (The Connecticut Department of Labor has interpreted state law to require this.)

IV. How will FLSA increase municipal employers' administrative burden?

1. The computation of overtime compensation rates is complicated. Because such things as merit pay, career incentives pay, longevity pay, shift differentials, and regular and recurring bonuses must be included in the computation, every employee in a department could have a different overtime rate, and one employee's overtime rate could even vary from week to week. (See III.5. above.)

2. Swapping time (shift trading). Police officers and firefighters under the 7(k) exemption may continue the practice of voluntarily switching shifts or "tours of duty," or parts thereof, with fellow employees for personal reasons. However, municipal employers will now be required to maintain records of all such time traded by employees. Also, if the time period during which this time is traded and paid back exceeds 12 months, the municipality would be required to pay overtime for such additional hours worked in a work period as a result of such traded time.

Attachment

CONNECTICUT CONFERENCE OF MUNICIPALITIES • 956 CHAPEL STREET, NEW HAVEN, CONNECTICUT 06510 PHONE (203) 772-2168

Selected Bibliography of FLSA Information

- "The Fair Labor Standards Act and Cities," National League of Cities (August 19, 1985).
- "Outline of the Fair Labor Standards Act: General Requirements and Coverage of State and Local Governments," Epstein, Becker, Bursody & Green, P.C., National League of Cities, International City Management Association (1985).
- "A Guide to Implementing the Fair Labor Standards Act," National Public Employer Labor Relations Association (1985).
- "State and Local Government Employees Under the Fair Labor Standards Act," U.S. Department of Labor (DOL).
- "Employment Relationship Under the Fair Labor Standards Act," U.S. DOL.
- "Executive, Administrative, Professional and Outside Sales Exemptions Under the Fair Labor Standards Act," U.S. DOL.
- "Records to be Kept by Employers Under the Fair Labor Standards Act," U.S. DOL.
- "Regulations, Part 541: Defines the Terms Executive, Administrative, Professional, and Outside Salesman," U.S. DOL.
- "Regulations, Part 553: Employees of Public Agencies Engaged in Fire Protection or Law Enforcement Activities (Including Personnel in Correctional Institutions)," U.S. DOL.
- "Regulations, Part 778: Interpretative Bulletin on Overtime Compensation," U.S. DOL.
- "Interpretative Bulletin, Part 785: Hours Worked Under the Fair Labor Standards Act," U.S. DOL.
- "The Fair Labor Standards Act of 1938, As Amended," U.S. DOL.

8/85

STATE OF CONNECTICUT
PERSONNEL DIVISION
DEPARTMENT OF ADMINISTRATIVE SERVICES
STATE OFFICE BUILDING HARTFORD, CONNECTICUT 06106

September 19, 1985

Congressman Austin J. Murphy
Chairman of House Subcommittee
on Labor Standards
Room B 346 A
Rayburn Building
Washington, D.C. 20515

Dear Mr. Chairman:

Please submit the enclosed information about the impact of the U.S. Supreme Court's decision in Garcia v. San Antonio Transit Authority into the record for the hearing of Tuesday, September 24, 1985.

Sincerely,

Sandra Biloon, Director
Personnel and Labor
Relations

SB;EM:jm
Enclosure

STATE OF CONNECTICUT
PERSONNEL DIVISION
DEPARTMENT OF ADMINISTRATIVE SERVICES
STATE OFFICE BUILDING HARTFORD, CONNECTICUT 06106

As a result of the U.S. Supreme Court's decision in Garcia v. San Antonio Metropolitan Transit Authority, the minimum wage, overtime and reporting requirements of the Fair Labor Standards Act (the Act) apply to State government employees. The U.S. Department of Labor (DOL) has recently determined that it will begin enforcement of the Act on October 15, 1985. However, application of the Act to state government will be enforced retroactive to April 15, 1985.

While the Act's requirements are mirrored in Connecticut law such law has not applied to the state employer. Although the State as an employer is in substantial compliance with the Act due to the standards set by the Personnel Act governing state employment and by collective bargaining agreements, the intricate and detailed requirements of the Act constitute a substantial departure from the practices that have historically prevailed in state employment.

Following is an analysis of the impact of some of the provisions of the Act on the state employer. While this analysis does not include all the provisions which have impact it highlights some of the most significant effects of the Act.

While the Act exempts elected officials and their personal staff, executive, administrative, professional and seasonal employees, the majority of state employees fall within its jurisdiction.

It is important to note that the Act's requirements are minimum requirements superceding provisions in state statutes and collective bargaining agreements. The Act does not prohibit the state employer from adopting more stringent requirements than those contained in the Act whether through legislation or collective bargaining agreements. Therefore, the state employer is now required to satisfy the state, federal or collective bargaining requirement most beneficial to the employee.

Overtime Requirements

The Act places overtime pay requirements on the employer as to employees who are not exempt.

In general, for non-public-safety employees the Act requires compensation at time and one-half the employees regular rate of pay for any hours worked in excess of 40 in a designated 7 day period. For public-safety employees the employer may elect a work period ranging from 7 to 28 days with a maximum of 53 hours at regular rate per 7 day period for fire and 43 hours for police.

For employees of residential health care facilities the Act allows the employer to use a period of 14 days with a maximum of 80 working hours at regular rate. Any hours worked in excess of 8 in a designated 24 hour period, however, must be compensated at time and one-half the regular rate.

The State of Connecticut in substantial compliance with the Act's overtime requirements. In many agencies where round-the-clock coverage is required, however, the state employer has instituted or negotiated rotating work schedules which, given the requirements of the Act, create an administrative burden and a significant increase in overtime compensation.

The most common rotating schedules are the 72-72-80 biweekly hours over a six week period averaging 37.5 hours per week; and the 5 on - 3 off with 9.3/4 hour days for state police and with 8 hour days for other round-the-clock operations averaging 40 hours or 35 hours per week respectively. These work schedules operate on the concept of compensatory time i.e. given any 2 week pay period or even a 7 day period, the employee works some long weeks and some short weeks over the averaging period while receiving compensation for 37 1/2, 40 or 35 hours each week. Any time worked in excess of the averaged work week is compensated at regular rate up to 40 hours (e.g. hours between 37 1/2 or 35 and 40) and at time and one-half the regular rate for hours in excess of 40.

The Act would now require (using the 5 on - 3 off 8 hours per day schedule as an example) that any overtime shift during the long weeks be paid at time and one-half the regular rate. Conversely, during the employees' short week, the Act allows the employer to compensate the first overtime shift at straight time. While theoretically the increased overtime cost in the long week can be offset by the decreased cost in the short week, the administrative burden of implementing and administering such a system substantially increase operational costs and causes significant disruption to the current method of salary payment as negotiated with employee organizations.

Additionally, the Department of Children and Youth Services engages in certain programs with staffing needs which constitute a significant departure from the requirements of the Act.

In one program the department employs married couples to reside in a group home and provide residential care services to the children entrusted to them. The couple is assigned to a 51 hour per week work schedule. During the off hours, Monday to Saturday, one of them must remain in the group home so as not to leave the children unattended. Sunday they are both off duty.

The Act states that in any assignment of more than 24 hour duration the employer may deduct 8 hours as "sleep time". The remaining 16 hours of each day must be considered hours worked. In the above situation the Act would require that a total of 96 (16 x 6) hours be compensable hours, and that those hours in excess of 40 be compensated at time and one-half resulting in compensation for the equivalent of 124 hours at regular rate. The cost of housing, meals and supplies would not offset the increase in compensation and the additional administrative (payroll) costs.

Similarly, the Department of Children and Youth Services also conducts a "wilderness" program. The program requires the employees to train and supervise children in backpacking, rock climbing and other survival activities in a wilderness setting for 21 days. During such field assignment the staff cannot leave the field environment. Typically, each day consists of overnight camping where the staff would be allowed 8 hours of uninterrupted sleep. Funding for this program is obtained in large part through private or parental donations. Given the "compensable hours" and "overtime" requirements of the Act, this program can not continue in its present form.

The Administrative burden created by the Act's overtime requirements are compounded by the prescribed formula used to obtain the "regular rate" for purposes of computing the time and one-half rate for compensation of all hours worked in excess of 40. Because such things as shift and weekend differentials, longevity pay, skill differentials, home office differential and recurring bonuses must be included in the "regular rate" formula, every employee who is subject to the requirements of the Act could have a different overtime rate, and one employee's overtime rate could even vary from week to week.

Dual Employment

The Act requires that employees under its jurisdiction be compensated at the rate of time and one-half their regular wages for all hours worked in excess of forty.

Historically, state employees have been allowed to seek and retain employment in two or more agencies concurrently. Under the Connecticut General Statutes we have considered each agency to be a separate employer. The U.S. Department of Labor, however, would view the State as the employer in a joint employer venture. The impact of such determination would result in the following:

-some employees would be terminated from their secondary job or may have their hours of work diminished.

-some employees would not be terminated because collective bargaining agreements would not allow for a termination without just cause or lay off for purposes of avoiding the overtime compensation.

-for those employees who continue in the dual employment arrangement the state will have to develop a payroll system with capability for maintaining the employees' weekly workschedule in the separate agencies so as to allow for the monitoring of the number of hours worked or for the payment of overtime hours worked at the appropriate rate.

-the hourly rate of compensation for purposes of computing overtime would vary from week to week depending on the number of hours worked at each job (assuming a different rate of pay in each job as would be true in most cases).

-a job which would otherwise be exempt from the Act, would be considered non-exempt if the other job in the dual employment arrangement was not exempt and comprised over 50% of the total hours worked in both jobs. For example, the State Trooper job is covered by the Act. Many of our troopers hold teaching jobs which are exempt from the Act in the state university system or with the Municipal Police Training Council. We currently treat those jobs as separate jobs with separate employers. Under the Act since generally more than 50% of the employee's time is spent performing non-exempt work as a trooper, we would now be required to compensate the employee at the rate of time and one-half the "regular" hourly wage for all hours worked in excess of forty. The regular hourly wage is to be obtained by adding the wages from both jobs and dividing by the total number of hours worked.

Complisance with the "joint employer" concept as interpreted by the U.S. Department of Labor would require the State to develop a complex system by which to monitor the work schedules of employees who voluntarily sought employment in two separate state agencies. It would substantially increase the overtime costs since approximately 2,000 employees currently hold two separate jobs. Much of the increased overtime cost cannot be avoided since in most cases the employee cannot be terminated or laid off.

In contrast with an industrial conglomerate, state government cannot draw clear lines of demarcation between its different employers due to the body of laws which commonly govern all agencies and are enforced by other state agencies (e.g. civil service, employee relations and similar legislation).

Patient Workers

The Departments of Mental Health, Mental Retardation and the Veteran's Home and Hospital employ some of their patients, clients and residents to perform certain pre-approved maintenance functions at the facilities where they reside. Since the Veteran's Home and Hospital are the most experienced in this area and have the most data available, the following detailed analysis of the impact of the Act on the state will be based on the experience in that agency. Although the specific circumstances may differ with respect to the other two agencies, the concept of "patient workers" applies to them as well.

The Act requires that any patient-worker who is performing a productive function with economic value be paid the minimum wage. Such patient workers may be charged room and board but it must be obtained after he is paid, (It should be noted that to charge for room and board only those residents who are involved in the work program may give rise to a successful "discrimination" or "equal protection" complaint).

The Veteran's Home and Hospital currently has two categories of patient workers, the VH payroll personnel and detail personnel.

VH Payroll Personnel - This program was established to provide veterans with an opportunity to earn money to cover incidental expenses while domiciliary residents at VH & H and to provide them with rehabilitation opportunities. In view of the rehabilitation and theraputic value of these positions and because room, board, medical, recreational and social programs were provided it was determined that they should be paid at less than minimum wage. Presently VH & H has approximately 170 of these positions.

According to the Institutional Business Manager for fiscal year 1985-our VH payroll was $291,500. This would increase by $795,000 if VH payroll personnel were paid minimum wage and $1,900,300 if paid a wage commensurate with classified employees.

Detail Personnel - These veterans whose physical classification precludes their assignment to the VH payroll are, if physically and mentally able, assigned to various minor details. These include tasks such as feeding hospital patients, cleaning small areas within their platoons, peeling vegetables, acting as messengers. They are not very productive. These veterans had historically been paid in cigarettes for such tasks until 1983 when this was changed to $12.00 bi-weekly in an effort to discourage cigarette smoking. These details are therapeutic in that they provide the veteran with meaningful activity. There are approximately 140 men on the detail payroll. In fiscal year 1985 the detail payroll totaled $46,800. If we were to increase to minimum wage, it is estimated that the detail payroll would increase to approximately $350,000 per year.

Pensions and Compensation - Approximately 75% of our veterans are receiving Social Security, VA or other pensions or disability compensation. With the implementation of the Act an individual on the VH payroll would receive income ranging from approximately $6,000 to $9,000 per yar. This would result in reduction or loss of pensions in many cases and loss of disability compensation. Since this will be taxable income, they will also be required to pay income tax. Since many of our veterans leave or are discharged after being here awhile, they will be required to undergo the long, tedious process of getting their pensions and compensation reinstated. A record of having earned minimum wage while at this facility will greatly hinder such efforts.

Currently since veterans on the VH payroll are paid less than minimum wage, supervisors are relatively liberal in the areas of "time and attendance." Implementation of the Act would necessitate that supervisors strictly enforce time and attendance regulations as well as quantity and quality of work.

Veterans who have dependents are not required to pay for care and treatment at VH & H. Their pensions, compensations, etc. are sent to their dependents. If their increased income from VH payroll or detail payroll caused their compensation and pensions to be decreased or terminated their families would be destitute.

The additional funds to cover the increased payroll would exceed approximately $1,000,000 per year. In addition, the more complex payroll system would necessitate establishment of additional classified positions to manage it.

In summary, the residents at the VH & H are not working for "economic security". Rather their objective is more towards emotional security, for this informal work program gives meaning to their lives, self respect and dignity. The veterans are given a home here. They are provided with sustaining life supports of food, clothing and shelter, in addition to vocational training, continuing education program and entertainment. The normal economic reality of job necessity, supported by protective wage regulations does not exist under these circumstances. A small token of pocket money in lieu of cigarettes, that is received every other week is in appreciation for their motivation and example to others. It gives them an opportunity to purchase a few small luxuries.

Compensatory Time

The State of Connecticut and employee organizations have agreed that in certain cases (usually at the election of the employee) employees would receive compensatory time in lieu of overtime payment. Employees who are

required to work overtime often elect compensatory time in order to get relief from the demands of the job. Application of the Act to state employment would deprive the employees of an election of time off and would substantially increase overtime costs for the employer. Of course, an employee may use compensatory time within the same week that the extra hours were worked. Consequently almost all of the overtime must be compensated for in cash.

Volunteers

The Act's definition of "volunteers" requires, among other things, that a volunteer may only receive a "nominal" payment per call in addition to reimbursement for out-of-pocket expenses. The U.S. Department of Labor (DOL) considers $2.50 a "nominal" payment. Under such definition, an employee who wishes to do volunteer work must now be compensated at his/her regular rate or overtime rate if the volunteer activity is in addition to forty hours of work.

Many employees of the State, especially in the Department of Mental Retardation often volunteer to take our retarded clients on recreational activities or shopping for clothes after hours. This arrangement is not for the benefit of the employer, but rather based on the relationship between the employee and the client. The loss of such volunteer status would deprive our retarded clients the benefits they enjoy in the community while spending some time away from the institutional setting. It would also deprive the employee from donating his/her time in the interest of handicapped individuals entrusted to the care of the State.

E (KIKA) DE LA GARZA, TEXAS,
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U.S. House of Representatives
Committee on Agriculture
Room 1301, Longworth House Office Building
Washington, DC 20515

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COUNSEL
CHARLES HILTY,
MINORITY STAFF DIRECTOR
EDWARD BROWDER,
CLERK SECRETARY

September 19, 1985

The Honorable Austin J. Murphy
Chairman
Subcommittee on Labor Standards
House Committee on Education and Labor
B346A Rayburn Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

It is my understanding the Subcommittee on Labor Standards of the Committee on Education and Labor has scheduled hearings on a number of bills introduced as a result of the recent Garcia v. San Antonio Metropolitan Transit Authority, et al Supreme Court decision.

In this regard, I am forwarding for consideration at these hearings a letter I received from Mr. Dale Kugler of Cozad, Nebraska, concerning an exemption from the Fair Labor Standards Act for state brand inspection personnel. I would appreciate your making Mr. Kugler's letter a part of your official record of hearings.

With best wishes, I am

Sincerely,

E (Kika) de la Garza
Chairman

abh

Enclosure

Kugler
Feedlots Inc.
Rt. 2, Box 118
Cozad, NB 69130

August 28, 1985

The Honorable E. (Kika) De La Garza
Room 1401
Longworth House Office Building
Independence Avenue between C Street
and South Capitol Street, SE
Washington, D.C. 20515

RE: Fair Labor Standards Act

Dear Representative De La Garza:

As you know, the cattle industry of our nation is in a very depressed state. With this in mind, it is with a degree of urgency that I write you this letter.

Nebraska, along with many other Western states, has for many years had a livestock brand inspection program. These agencies were designed to assure that the rightful owners of livestock received the proceeds of sale.

As a direct result of the United States Supreme Court decision on February 19, 1985 regarding the Garcia vs. San Antonio Metropolitan Transit Authority et al, the brand inspection agencies are faced with the possibility of having to pay overtime wages to their brand inspectors. Brand inspection is a very unique profession, and one that does not lend itself well to what is considered a normal work week.

I feel it is in the best interests of the cattle owners, the inspection agencies, and the actual employees that a Federal Exemption be granted to those states providing a brand inspection service. My reasons for this are as follows:

1. Cattle movements and shipments are seasonal.

2. Most state programs are industry supported. Having to pay overtime will translate into forced layoffs of personnel and a tragic reduction in service.

3. Working hours for the brand inspectors are very erratic, as they work when the livestock owner works. The daily workload can vary from zero activity to a 12-hour day.

4. Most brand inspectors are paid a monthly salary. Sometimes they work more than forty hours per week, sometimes less than forty hours per week.

5. There is minimal direct supervision of these employees who are assigned a large geographical area in which they are responsible for administering a law. Many, if not most, will only see their supervisor about once a month.

Because you represent a state which has a large livestock population, I hope that you will share my concern for this issue. Your help and assistance in gaining an exempt status for brand inspection personnel as it relates to the Fair Labor Standards Act will be greatly appreciated.

Cordially yours,

Dale Kegler

OCT 7 1985

Arkansas Game & Fish Commission

2 Natural Resources Drive Little Rock, Arkansas 72205

Hilary Jones
Chairman
Dogpatch

N. C. "Casey" Jones
Vice-Chairman
Pine Bluff

Beryl Anthony, Sr.
El Dorado

Frank Lyon, Jr.
Little Rock

Tommy L. Sproles
Little Rock

William E. Brewer
Paragould

J. Perry Mikles
Booneville

Dr. Duncan W. Martin
University of Arkansas
Fayetteville

Steve N. Wilson
Director

September 30, 1985

Hon. Austin J. Murphy, Chairman
House Education and Labor Subcommittee
on Labor Standards
Room B-346
Rayburn Office Building
Washington, D. C. 20515

Dear Congressman Murphy:

Attached is a copy of a letter which was sent to the members of the Arkansas delegation and to the Senate Labor Subcommittee members.

We request that you enter this as a part of the oversight hearing record on the Garcia decision.

Cordially,

Steve N. Wilson

STEVE N. WILSON
Director

SNW:CH:jh

Attachment

Arkansas Game & Fish Commission
2 Natural Resources Drive Little Rock, Arkansas 72205

Hilary Jones
Chairman
Dogpatch

N. C. "Cassy" Jones
Vice-Chairman
Pine Bluff

Beryl Anthony, Sr.
El Dorado

Frank Lyon, Jr.
Little Rock

Steve N. Wilson
Director

Tommy L. Sproles
Little Rock

William E. Brewer
Paragould

J. Perry Mikles
Booneville

Dr. Duncan W. Martin
University of Arkansas
Fayetteville

August 1, 1985

The Honorable Don Nickles, Chairman
Senate Subcommittee on Labor
SH 608, Hart Office Building
Washington, DC 20510

Dear Chairman Nickles:

Overtime provisions of the Fair Labor Standards Act will cripple conservation programs nationwide. State fish and wildlife agencies are generally under severe budget restraints at the present time and are seeking means of financial support just to keep current programs operating.

This comes at a time when the public demand for natural outdoor recreation is rapidly expanding. These state agencies are the main suppliers for all forms of such outdoor recreation including not only the wildlife related forms such as hunting, and fishing, but the many related and equally important varieties of observation and visitation on our lands and waters.

Dedication has been the foundation of the outstanding success in wildlife conservation and water management in our states. Violations of game and fish regulations do not fit into time schedules. Officers must be responsible and flexible in their operations. Fish hatchery crews, wildlife trapping and restocking groups and land management and farming operations must proceed when the opportunity and weather allows.

To coordinate such outdoor programs with people with mixed working requirements would be impractical. To be unresponsive to the public in protection of our wildlife would be ineffective. Most of all, the states cannot afford to staff up or to increase their payrolls to the extent necessary to maintain operations under the provisions of the present Fair Labor Standards Act. Conservation as we have know it in this county would deteriorate.

Arkansas Game & Fish Commission
[illegible]

We urge you to do everything possible to return to the states their opportunity to maintain the natural resources of this country.

Cordially,

STEVE N. WILSON
Director

SNW:CH:dw
cc: Senate Committee members
Arkansas Delegation

Prepared Statement of Steven Alan Lewis, Director, Oklahoma Department of Wildlife Conservation

I appreciate the opportunity to add my views to the hearing record impacts of the "Garcia Decision" on the ability of the Oklahoma Department of Wildlife Conservation to meet its management and protection responsibilities.

The requirement of having to pay overtime and/or adjust work week lengths to comply with the "Garcia Decision" has reduced the Oklahoma Department of Wildlife Conservation's ability to manage and protect entrusted state resources.

The impact of the "Decision" is a loss of flexibility to meet seasonal work peaks and not a reduction in the total annual work effort. The "Decision" provides that any work beyond the basic 40 hours must be compensated for by overtime pay at a rate of time and a half. The Oklahoma Department of Wildlife Conservation does not have the funds to pay overtime and therefore cannot allow any employee to work over forty hours per week. The Department is on a fixed income derived from license sales and does not receive supplemental general revenue appropriations.

The Oklahoma Department of Wildlife Conservation must then end employees work week when a total of 40 hours are accumulated. This means the end of a particular management or enforcement effort for that week. Examples of specific impacts are outlined below for specific Department areas of responsibility.

Enforcement

Wildlife Law Enforcement is very unique in the field of law enforcement. It is an exclusive state function. In most instances, one officer is responsible for the wildlife law enforcement of an entire county. That officer must respond to the requests for enforcement by both concerned sportsmen, concerned citizens, and landowners in their assigned area. There are no two counties with identical enforcement problems, therefore each officer must formulate the method in which they respond to arising enforcement problems. Not only do they have enforcement problems, but there are public relations tasks with various groups and individuals that must be accomplished. Also, there are periods or seasons of the year when five enforcement officers assigned to a county would not be enough personnel.

AN EQUAL OPPORTUNITY EMPLOYER

Since the "Garcia Decision" mandates that comp time cannot be saved over several months for later use and the Department cannot afford overtime, each officer is restricted to 171 hours in 28 days or to a 41 or 42 hour week with no variance.

The end result has been and will continue to be that during the traditional fall hunting seasons, dove, archery deer, rifle deer, primitive deer, quail, turkey, waterfowl, etc., our officers will be unable to properly check hunters, enforce the laws, and assist landowners with hunting related problems. Enforcement of fishing regulations during these periods will be very restricted, if at all. Citizen requests for assistance may be unanswered.

Fisheries

Management and Research Efforts - Fishing in Oklahoma generates over $359 million to local economies. When fishing declines, so do local businesses, particularly those who would not exist if it were not for fishing. To a great extent, good fishing is a product of fish population monitoring and proper fisheries management. When problems occur which result in declines in fishing success, it becomes the job of the fisheries manager to identify the problems and solve them. Annual monitoring of fish populations helps the biologist understand what is affecting fishing success and gives a base for making recommendations to improve the population.

Population monitoring requires many hours of field sampling by fisheries workers during times when fish are most vulnerable to collection methods. During the spring months, Fish technicians and biologists spend long hours in the field sampling populations that are spawning and vulnerable to capture. In order to collect adequate sample numbers for reliable data and assessment, these workers stay with the job for as long as it takes to get the job done - many times spending 50 or more hours afield during a typical weekly spring sampling period. In some cases, workers must travel up to 4 hours, one-way, just to reach a particular lake scheduled for sampling.

Impact of the 40-hour work week has caused fisheries workers to reduce this effort in order to comply. Many times, the 40-hour "time clock" runs out by late Wednesday or Thursday and forces workers to drive back to their homes without completing the task, only to return to the same location again after the start of the next week. The only alternative at present, excluding reduction in effort, is to hire part-time employees and run shifts between work crews. Again, the Oklahoma Department of Wildlife Conservation does not have funds to pay overtime or pay additional work crews, so work is stopped prior to completion.

Game Management

Area Assistants who live on public hunting areas in Department housing are not able to serve the public, protect land from wildfires, etc., if the 40 hour work week restriction continues. If 40 hours is achieved on Wednesday, for example, and a wildfire occurs with the possibility of destroying thousands of acres of habitat or can endanger private land holdings, the employee can ~~take~~ no action.

Beyond wildfires, with resident help off duty there will be less patrolling and supervision of the areas. More opportunity for vandalism and poaching will exist. Exempt personnel cannot fill in as it is physically impossible to work 24 hours per day. Further, with our enforcement officers restricted to 40 hours, they have less time to devote to our public lands. The end result will be critically low enforcement and management of these public lands.

Problems will also occur during hunting seasons, particularly deer season. Management and supervision of hunts requires 100 percent of the time of both the manager and his assistant. Workdays of 14-18 hours are not unusual and it obviously does not take many days to complete a 40-hour week. We must then either leave some gates unattended and some or most hunts poorly supervised or not supervised at all. The alternative is to use untrained temporary help who do not know how to handle problems or unexpected situations and who cannot gather data properly or accurately and again which there are not funds for. Lastly, when the public on the area requests help, we cannot respond after the 40 hour work week is completed.

Production at the Game Farm has been impacted by the 40-hour restriction on the hatchery assistants. This work is seasonal in regard to extra duty (February-July). At the close of hatching season, comp time normally could have been given. Since implementation of the 40-hour week, we have had to resort to using unskilled hourly workers with a high turnover rate of employment to try and achieve production quotas.

Because the temporary labor is unskilled and our permanent force so small we must spread our permanent employees out very thin to ensure that someone is on duty to handle the unexpected. Any absences among the permanent employees (injury, illnes, emergency leave) creates a real manpower problem and at a game bird hatchery, failure to correct a problem can result in loss of the entire production. Under present regulations, we must now let all work, except bird production, go undone during the production period.

Employee Morale

General adverse impact on employee morale has resulted since implementation of the "Garcia Decision." Employees have lost the ability to take extra days off during their slack periods. There is a feeling of being frustrated because they no longer can do a professional job.

The "Garcia Decision" has not saved the employees from inordinate work or provided compensation for extra efforts. To the contrary, it has removed many job related benefits with no increase in pay and took away their opportunity to adjust their own work to best serve the citizens and wildlife resources of this state.

The end result of the above problems will be a reduction in the quality of Oklahoma's outdoor resources. We know from history that our deer, turkey, and other species can be impacted and even eliminated by poaching. But without the ability to respond to landowners' reports of poaching, who will prevent it from happening.

The entire realm of hunting, fishing, and related private commercial interest are dependent on proper management and protection. One cannot survive without the other. The Oklahoma Department of Wildlife Conservation cannot meet its responsibilities without flexibility in its work schedule.

To be effective, there needs to be an option to allow comp time to be accumulated and to be used over an extended period of several months.

Thank you.

cc: The Honorable Don Nickles

PREPARED STATEMENT OF ROBERT PORTER, SECRETARY-TREASURER, AMERICAN FEDERATION OF TEACHERS, AFL-CIO

Mr. Chairman and Members of the Subcommittee:

I am Robert Porter, Secretary-Treasurer of the American Federation of Teachers, AFL-CIO, and I appreciate the opportunity to present this statement to you today on behalf of the AFT's 610,000 members who, in addition to instructional personnel (exempt under the Fair Labor Standards Act), include state government employees, health care workers, and paraprofessional and school support staff.

The AFT strongly urges the Congress to uphold the integrity of the Fair Labor Standards Act and its Amendments, and resist the efforts of those who by legislative and administrative means would subvert the recent decision of the United States Supreme Court in Garcia v. San Antonio Metropolitan Transit Authority.

Simply put, AFT believes that an attack on the Garcia decision is a direct assault against all working people, and against a tradition of fairness, jurisprudence, and common sense that is firmly rooted in this nation's values and history.

Except for the anomalous National League of Cities v. Usery decision — which split the Court 5 to 4 in 1976, and has now been overturned by Garcia — the legislative and judicial history subsequent to the enactment of the Fair Labor Standards Act in 1938

progressively upholds the responsibility and the right of the Federal Government to provide private and public sector workers with basic and fundamental protections against wage and hour exploitation.

In 1938, the Fair Labor Standards Act required that most private sector employers pay their workers no less than the Federally established minimum wage, and at a rate no less than time and half for overtime (in excess of 40 hours a week). Gradually, wage and hour protections were extended to hospital workers and non-teaching school personnel. In 1974, the Congress enacted Amendments that brought most non-supervisory public employees under the protection of the Fair Labor Standards Act. According to the Senate Report on the Amendments of 1974, "Equity demands that a worker should not be asked to work for subminimum wages in order to subsidize his employer, whether that employer is engaged in private business or in government business." The issue of cost to state and local governments was fully explored prior to the enactment of the 1974 Amendments, and was determined to be neither prohibitive nor burdensome.

Today forty-seven years following the enactment of the FLSA, eleven years following the extensions of wage and hour protections to public employees, and seven

months after the Garcia decision, we still receive reports of classroom aides in parts of the South who do not earn even the minimum wage, and of low-paid clerical workers and human services case workers who are required consistently to work involuntary overtime without compensation. The forms — and effects — of wage and hour exploitation are no different today than they were forty-seven years ago, except that in 1985 the victim — outside the uniformed services — is likely to be female, poor, unrepresented, in many cases a single parent, black or hispanic, and a public employee.

Yet, no sooner had the Garcia decision been issued but that the Reagan Administration, some public employers, and others who might be expected to know better had begun to voice objections that the implementation of Garcia would "cost too much" or violate "the principle of State's rights." These objections, in their language, stridency, and fundamental error, recall the opposition voiced in earlier times to civil rights legislation, environmental protection, and product safety laws.

The issues of Constitutionality and cost had been considered thoroughly by the Congress and the Department of Labor, and upheld by the U. S. Supreme Court prior

to the enactment of the 1974 Amendments. Following the extension of wage and hour protections to public employees, the U. S. Department of Labor calculated the cost of overtime pay for the uniformed services at less than two and a half percent of payroll. More recently, data compiled by the International City Management Association indicate that the total additional costs associated with extending wage and hour protections to public employees may be expected to range from less than one quarter of one percent to slightly more than one percent of payroll. Even these projections may be significantly exaggerated, in that they do not account for those jurisdictions in which FLSA minimums already have been secured through collective bargaining or other agreements. The bottom line is that fair labor standards are affordable and compatible with fiscal responsibility.

The AFT asks, therefore, that the Congress reaffirm its commitment to fair labor standards for all those who work for wages, irrespecti e of the sector in which they happen to be employed. Specifically, we urge the Congress to reject any proposals that would deny public employees compensation for overtime at the time and a half rate.

Recognizing however that certain jurisdictions and their employees may prefer to negotiate overtime arrangements that substitute overtime compensation in "comp

time" off instead of cash, or that permit the individual employee to choose between time or cash for overtime worked, we recommend that collectively bargained agreements to this effect be permitted in the public sector under the FLSA, provided that the rate of compensation for overtime (whether it be paid in cash or "comp time") must be no less than at the time and a half standard. We further recommend that existing collective bargaining agreements under which overtime is compensated in cash or time off be "grandfathered" under Garcia, provided that the time and a half minimum applies.

Please be assured that the AFT stands ready to work with the Congress and its Committees in crafting whatever specific legislative language may be needed to help assure that the mandate of Garcia is carried out in a fair, equitable, and responsible manner.

Thank you.

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